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Supreme Court of the United States

OCTOBER TERM, 1907

No. 101

JOHN MURRAY GARNER, ET AL, PETITIONERS,

LOUISIANA.

ON PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA.

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 617

JOHN BURRELL GARNER, ET AL., PETITIONERS,

*vs.*

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA

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[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**INFORMATION—Filed April 27, 1960**

Ralph L. Roy Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

1. John Burrell Garner
2. Vernon Johnnie Jordon

late of the Parish of East Baton Rouge, on the Twenty-ninth (29th) day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Sitman's Drug Store; said conduct being in such a manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 2]

[File endorsement omitted]

No. 35568

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

---

STATE OF LOUISIANA

VS.

1. JOHN BURRELL GARNER (CM) 8955 Scenic Hwy
  2. VERNON JOHNNIE JORDON (CM) Box 3689, Scotlandville
- 

INFORMATION

DISTURBING THE PEACE

---

Filed April 27 A. D., 1960

Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.

Assistant District Attorney

WITNESSES:

Off. T. W. Larsen, Capt. Weiner, Major Bauer, Lt. Martin, Off. E. Reipricht.

[fol. 3]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number .....

STATE OF LOUISIANA,

VS.

JOHN B. GARNER, et al.

APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to answer to the Bill of Information, and plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

What unlawful acts of conduct did the defendants commit in such a manner as to unreasonably disturb the public?

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose presence the acts or offenses were committed in such a [fol. 4] manner as to unreasonably disturb the public?

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Sitman's Drug Store, and by whose authority and/or under what authority the agent of the Sitman's Drug Store was acting when said agent ordered the defendants to move from a cafe counter seat at the said Sitman's Drug Store.

—8—

State the reasons or causes for the agent of the said Sitman's Drug Store to request or ask the defendants to move from a cafe counter seat at or in said drug store and by whose authority and/or under what authority was the said agent of said drug store acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said drug store.

—9—

State whether or not the agent of the said Sitman's Drug Store requested the defendants to move from a cafe



counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said drug store was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances, regulations, customs and/or usages of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, John Burrell Garner and Vernon Johnnie Jordan, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

John Burrell Garner, Defendant, Vernon Johnnie Jordan, Defendant.

Attorney for Defendant: Johnnie A. Jones.

[fol. 6] *Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurats omitted in printing.*

[File endorsement omitted]

[fol. 7]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

PROPOSED ORDER GRANTING BILL OF PARTICULARS

Let Honorable J. St. Clair Favrot, District Attorney of the Parish of East Baton Rouge, State of Louisiana,

be and he is hereby Ordered to furnish the defendants, John Burrell Garner and Vernon Johnnie Jordan, the Particulars requested in the foregoing application, within ..... days from the date hereof.

Baton Rouge, Louisiana, this ..... day of April, 1960.

....., Judge, 19th Judicial District Court of Louisiana.

[fol. 8]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, the defendants in the above entitled and numbered cause, move to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Sitman's

Drug Store after having been ordered to do so by the agent of Sitman's Drug Store, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which are set forth and enumerated in and/or under LSA-R. S. 14:103 of 1950, as amended.

[fol. 9]

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace; that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Sitman's Drug Store is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Sitman's Drug Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process

in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, [fol. 10] charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, John Burrell Garner and Vernon Johnnie Jordan, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they, each, are concerned, be declared null and void, and that they, each, be discharged therefrom.

Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Attorney for Defendants: Johnnie A. Jones.

John Burrell Garner, Defendant, Vernon Johnnie Jordan, Defendant.

[fol. 11] *Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurats omitted in printing.*

[File endorsement omitted]

[fol. 12]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

Bill of information filed.

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

No. 35,566

---

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

---

No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---



No. 35,568

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

These cases came before the court on applications for bills of particulars filed herein on behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

MINUTE ENTRY DENYING APPLICATIONS FOR BILLS OF  
PARTICULARS, ETC.

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these cases for bills of particulars on behalf of these [fol. 13] defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P. M.

**MINUTES OF THE COURT—Friday, April 29, 1960**

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566

---

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

---

No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,568

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

**MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.**

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, ren-

dered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this day in which to apply for writs.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

**MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY**

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded [fol. 14] not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Papers (omitted in printing).

[fol. 15]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS  
—Filed April 29, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come John Burrell Garner and Vernon Johnnie Jordan, defendants in the above entitled and numbered cause, respectfully notify and inform this Honorable Court that defendants will apply to the Supreme Court of the State of Louisiana in the above numbered and entitled case for Writs of Certiorari, Mandamus and Prohibition, and such other Writs as may be necessary to have the judgment of Your Honor which denied, rejected and/or overruled the defendants' "Motion to Quash" reversed, set aside and/or declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and  
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 16]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on Wednesday, April 27, 1960, the Application for Bill of Particulars was argued and submitted and the Court for oral reasons assigned, rendered Judgment denying the Application for Bill of Particulars in this case, to which ruling of the Court Counsel for the Defendants, John Burrell Garner and Vernon Johnnie Jordan, did then and there except and reserve a formal Bill of Exceptions thereto, asking that the Application filed in this case for Bill of Particulars on behalf of the said defendants, and the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29, 1960, the defendants' Motion to Quash was argued and submitted, and the Court, for oral reasons assigned, rendered Judgment denying the Motion to Quash to which ruling of the Court Counsel for the defendants, John Burrell Garner and Vernon Johnnie Jordan, did then and there except and reserve a formal Bill of Exceptions, and ask that the Court's ruling be made a part of the record; that the Bill of Information be made a part of the record and that defendants' Motion to Quash be made a part of the record.



The defendants, John Burrell Garner and Vernon Johnnie Jordan, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray [fol. 17] that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court  
of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 18]

IN THE SUPREME COURT OF LOUISIANA

Number 45214

STATE OF LOUISIANA, Appellee,

versus

JOHN B. GARNER, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND  
PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER  
THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF  
EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding.

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of  
John Burrell Garner and Vernon Johnnie Jordan applying  
for Writs of Certiorari, Mandamus and Prohibition, with  
respect represents:

-1-

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103 (7) of 1950, as amended, in that, allegedly on the 29th day of March, 1960, your relators refused to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Sitman's Drug Store; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

-2-

That your relators, each, alleged and averred that they [fol. 19] are members of the Negro race and were on the 29th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and place under a Fifteen Hundred (\$1500) Dollar bond, each.

-3-

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Sitman's Drug Store in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein [fol. 20] under the Application For Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash;

that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number 35,568, State of Louisiana, Appellee versus John B. Garner, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of [fol. 21] Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P.

Tureaud, By: Johnnie A. Jones.

[fol. 22]

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

**AFFIDAVIT**

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

[fol. 23]

**BRIEF**

May It Please The Court:

The Opinions of the District Court

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as



if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Partiers" and the "Motion to Quash."

### Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

[fol. 24]

### Syllabus

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of

such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A State cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

The defendants, John Burrell Garner and Vernon Johnnie Jordan (hereinafter called "Relators"), are Negro college students charged with the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the "Bill of Information" charges the re- [fol. 25] lators with having committed a crime by refusing to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by the agent of the said Sitman's Drug Store, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with DISTURBING THE PEACE, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

#### Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently,

erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 26]

#### Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

#### Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an

order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible [fol. 27] is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

#### Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 28]

**REMEDIAL WRIT**

**IN THE SUPREME COURT OF THE STATE OF LOUISIANA**

**No. 45214**

---

**STATE OF LOUISIANA**

**versus**

**JOHN B. GARNER et al.**

---

**OPINION AND JUDGMENT—Filed May 9, 1960**

**In Re John Burrell Garner et al.**

Applying for writs of certiorari, mandamus and prohibition.

Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.

J. St. Clair Favrot, District Attorney, Attorneys for Respondents.

Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.

**FWH, JBH, EHMcC, JDG, WBH, RAV, LPG.**

[fol. 29]

## IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

## APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of John Burrell Garner and Vernon Johnnie Jordan, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

“ . . . ; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . . ”

[fol. 30] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators, Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).



[fol. 31]

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING  
May It Please The Court:

Argument

Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

"Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction."

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103 (7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 32] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So. (2d) 778 (1943), and *State v. Christine*, 118 So. (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court heed:

"An act of conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute."

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the

Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 33] Certificate of service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered— See Rule XII.

Sec. 5 Rules of this Court. May 24, 1960.

FWH, JBH, EHMCC, JDG, RAV, LPG."

[fol. 34] Praecipe (omitted in printing).

[fol. 36]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge  
Presiding

Number 35,568

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER and VERNON JOHNNIE JORDON

---

**Transcript of Hearing—June 2, 1900**

**APPEARANCES:**

Ralph Roy, Assistant District Attorney, for the State of Louisiana

Johnnie Jones and A. P. Tureau, Attorneys for the Accused

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[fol. 38] (Sequestration of witnesses ordered).

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Mr. RIGGS P. WILLIS, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counsel Roy:

Q. State your full name please?

A. Riggs P. Willis.

Counsel Roy: We would like to reserve all our rights under previous motions and writs filed.

The Court: All right.

Q. Where are you employed Mr. Willis?

A. I own Sitman's Drug Store downtown, Third and Main, and the coffee shop attached to it.

Q. Did you own that particular business, that is, Sitman's Drug Store, at 301 Main Street on the 29th of March of this year?

A. Yes, I did.

Q. Did you have occasion to have these two colored men here come into your place of business that day?

A. Yes.

Q. What did they do?

A. That day?

Q. Yes. What did they do?

A. They simply seated themselves at the lunch counter.

Q. Any particular lunch counter?

A. We have a four-bay arrangement and they sat at the second bay.

Q. Go ahead.

A. They occupied two seats and their presence there caused me to approach them a short time later and advise them that we couldn't serve them, and I believe after that the police came and arrested them and took them away.

[fol. 39] Q. Now, when you advised them you couldn't serve them did they get up and leave or,—

A. No, one asked for coffee,—said they just wanted coffee.

Q. That was after you told them you couldn't serve them?

A. That was the conversation they had with me. I told them we couldn't serve them and one of the boys said he wanted some coffee.

Q. He said that after you told them you couldn't serve them?

A. That's right.

Q. And did he get up and leave or did he stay there?

A. No, he remained seated.

Q. Until the officers got there?

A. That's right.

Q. About how long after was that?

A. I would think less than ten minutes.

Q. Did you call the officers?

A. No, I didn't call the officers.

Q. Did any of your employees?

A. Not as far as I know.

Q. Do you know who called the officers?

A. I'm not at all sure. I know an officer was in the store at the time.

Q. Do you have any places there to serve colored people?

A. No, we have a coffee shop and restaurant adjoining our drug store and we have facilities for only the one race.

#### Cross examination.

By Counsel Jones:

Q. You say you have facilities only for one race. What was that, the human race?

A. The white race.

Q. The white race?

[fol. 40] A. That's right.

Q. You don't have any facilities for members of the negro race at all?

A. We have negro employees of the colored race, very fine employees. They eat in our place; they eat in the kitchen.

Q. But customers of your store,—do you have any facilities for the negro race?

A. In our drug store or coffee shop?

Q. I'm talking about any facilities, any place for your customers who come in there to make purchases?

A. I own a restaurant attached to and adjoining my drug store, and we serve only white people in that restaurant.

Q. Do you have a cafe for members of the negro race?

A. No.

Q. This cafe counter seat at which these defendants sat, was that in the drug store?

A. It is in my restaurant and coffee shop.

Q. Is that a part of the drug store?

A. It's owned by me. It is operated under a separate license.

Q. It is all housed in one room or one building?

A. There are two buildings. They adjoin. There are openings between the two.

Q. There is an opening between the two buildings?

A. That's right.

Q. And you come into the drug store part and go on into the cafe, is that right sir?

A. That's right.

Q. Do you refuse to serve members of the negro race in the drug store section?

A. No.

Q. You do serve them?

[fol. 41] A. Absolutely.

Q. Do you require members of the negro race in your drug store to buy at one counter and the whites to buy at another?

A. Oh no.

Q. They can both buy at the same counter?

A. Yes.

Q. No objection to that?

A. No.

Q. Do you put all their money in the same cash registers?

A. Yes.

Q. You make no distinction between their money?

A. No, none at all. I can say negroes are very good customers.

Q. For what reason did you refuse to serve these defendants?

A. As a matter of policy I have never invited colored trade, negro trade in the restaurant, as a matter of policy. I don't have the facilities. I have facilities for only one race, the white race.

By the Court:

Q. Is your business owned by a corporation or by you individually?

A. It is solely owned.

Q. By you?

A. Yes.

Q. And your store is located where?

A. At the corner of Third and Main, 301 Main Street.

Q. The restaurant is in a building adjoining?

A. In an adjoining building facing on Main Street.

Q. That's in the City of Baton Rouge?

A. Yes.

Q. Parish of East Baton Rouge?

A. Yes.

Q. Are you able personally to identify these two accused [fol. 42] who were in your place of business on that date?

A. Yes.

By Counsel Tureau:

Q. Mr. Willis, was anyone else in the store at the time?

A. Yes, there were a number of customers seated at the counter and a number of customers in the drug store too.

Q. These counters were divided up into cubicles or bays you called them?

A. There's an arrangement of counters, four rectangular counters, with stools at about two foot intervals all around it.

Q. In what you call a bay?

A. Yes.

Q. And in this second bay where these defendants sat were there other customers there at the same time?

A. I'm sure there were. I couldn't testify how many, but I'm sure there were other customers at the noon hour.

Q. Was there any complaint from the customers?

A. Not directly to me. I was in the other part of the store.

Witness excused.

CAPTAIN ROBERT WEINER, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counsel Roy:

Q. What is your full name?

A. Robert Weiner.



Q. What do you do?

A. I am a Captain with the Police Department.

Q. Captain, did you have occasion on the 29th of March, 1960, to go to Sitman's Drug Store on Main Street, 301 [fol. 43] Main Street in this City, and participate in the arrest of these two accused seated here?

A. I did.

Q. Do you recognize them?

A. Yes.

Q. Tell the Court exactly what was done?

A. Well, I received a call at police headquarters from the officer on the beat, Officer Larsen. He told me that there were two negroes sitting at the lunch counter at Sitman's Drug Store. I told him to just stand by until we arrived at the scene. Major Bauer approached them and told them that they were violating the law by sitting there and asked them to leave. One of them mentioned something about an umbrella that he had bought and he couldn't see why he couldn't sit at the lunch counter. He told them again that they were violating the law and when they didn't make any effort to leave we placed them under arrest and brought them to police headquarters.

Q. Did you see Mr. Willis over there?

A. No, I didn't see Mr. Willis. I'm assuming Mr. Willis is the manager, but we didn't talk to anyone in the place other than the two defendants.

Cross examination.

By Counsel Tureau:

Q. Your arrest was made solely on the call which you received from the police officer on that detail?

A. That's right.

Q. There was no complaint by anybody that these defendants were violating the law?

A. I don't know who made the complaint as far as the police officer was concerned.

Q. But you know of no complaint from anybody else other [fol. 44] than the police?

A. No, that's the only one that I know of.

Q. And when you arrived on the scene you saw these defendants sitting at this lunch counter?

A. That's right.

Q. And based upon what you call a violation of the law you arrested them, is that correct?

A. That's right.

Q. What law is this you are referring to that you advised them they were violating?

A. Act 103, which is disturbing the peace charge.

Q. You advised them that you were arresting them under the provisions of Act 103?

A. We told them that they were violating the law under the State Act and that we requested that they leave. When they refused to leave we placed them under arrest.

Q. That's all that transpired at that time?

A. Other than the fact that one of them said something about an umbrella that he had bought there.

Q. He told you he had bought an umbrella there?

A. That's right.

Q. Is it a fact that they were negroes that you arrested them?

A. The fact that they were violating the law.

Q. In what way were they violating the law?

A. By the fact that they were sitting at a counter that was reserved for white people.

Q. So the fact was, that they were negroes that was the cause of you arresting them?

A. Well, the only thing that I can say is, the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested.

[fol. 45] Q. Do you know of any such law as that?

A. They have a law here I believe that covers such a situation.

Q. You believe. Do you know positively that there is such a law?

A. The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103.

Q. You are saying that their mere presence in a store that you believe is reserved by law for white people constitutes a disturbance of the peace?

A. I didn't say their presence in the store. I said their presence sitting at the lunch counter.

Q. Lunch counter? You admit that?

A. Yes.

By Counsel Jones:

Q. The mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law, is that what you are saying?

A. That's right, yes.

Redirect examination.

By Counsel Roy:

Q. Captain, you are not a lawyer and you don't purport to be a student of the law. You are not a lawyer, are you?

A. No.

Q. You don't feel qualified to give interpretations on legal propositions and law, do you?

A. No.

By the Court:

Q. Can you identify these two accused as the two that you arrested on that occasion?

A. Yes, sir.

Q. Were they seated at the counter or in this bay at the [fol. 46] time you and the other officer entered the store?

A. Yes, sir.

Q. They were in the restaurant?

A. Yes, sir.

Q. Did you request that they leave before you placed them under arrest?

A. Yes, sir.

Q. Did they leave?

A. Not voluntarily.

Q. Not the first time?

A. No, sir, they never left at all.

Q. In other words, you did not place them under arrest until after you had given them an opportunity to leave?

A. That's right.

Q. And they did not leave after you had requested that they leave?

A. No, sir.

Q. It was then that you placed them under arrest?

A. That's right.

Witness Excused

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### FINDING OF GUILT

The Court: Let the defendants stand up.

(Defendants stood).

The Court: In this case, the evidence was not disputed, the evidence put on by the State, that these two accused were in this place of business on the date alleged in the bill of information, and they were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers [fol. 47] arrived they informed these two accused that they would have to leave, and they refused to leave. Whereupon, the officers placed them under arrest for violating the law, specifically Title 14, Section 103, subsection 7. The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public. I find them both guilty as charged. Do you request that I defer sentence and do you want me to sentence them now?

Counsel Tureau: We request that sentence be deferred and reserve a bill and ask that your Honor's ruling be made a part of the bill of exception.

Counsel Jones: We also inform the Court here and now that we intend to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and [fol. 48] prohibition.

The Court: Answer my question now. Is it your request that I defer sentence?

Counsel Tureau: Yes, sir, we do ask that sentence be deferred.

The Court: In accordance with counsel's request, the Court defers sentence in this matter. Meanwhile, the accused are to remain on their present bond, and sentence will be deferred until Tuesday, July 5, 1960, at which time they are to report back for sentence.

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[fol. 49]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER, VERNON JOHNNIE JORDON

---

This case came on for trial in accordance with previous assignment, the accused, charged with disturbing the peace, being present in court represented by counsel.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court, for oral reasons assigned, found each of the accused guilty as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the

Court and opposing counsel of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

Sentence deferred until July 5, 1960.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 50]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said John Burrell Garner and Vernon Johnnie Jordan (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly established that the defendants, neither of them were ever ordered to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, by an agent thereof as alleged in the Bill of Information under which the said defendants are charged. The owner of the said Drug Store, Mr. Riggs P. Willis, testified that the defendants occupied two seats and their presence there caused him to approach them and advise them that they couldn't serve them; that he had no facilities to serve colored people; that he only has facilities for the one race, the White race. The evidence establishes that the defendants were arrested and so charged because they are members of the Negro race and were at the time of their arrest

sitting at the cafe counter that was reserved for white people by the owner thereof.

—2—

[fol. 51] That it is clearly shown by the evidence adduced on the trial of said cause that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges that the defendants refused to move from a cafe counter seat at the said Sitman's Drug Store after having been ordered to do so by the agent of the said Sitman's Drug Store as distinguished from being advised that they, defendants, would not be served for the reasons that said cafe counter was reserved for members of the White race only and that the owner did not provide facilities for members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States, and repugnant to and in violation of Title 42, United States Code, Sections 1981 and 1983, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

John Burrell Garner, Vernon Johnnie Jordan.  
Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 52] [File endorsement omitted]

*Duly sworn to by John Burrell Garner and Vernon Johnnie Jordan, jurat omitted in printing.*



[fol. 53]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,568—Criminal Docket

---

STATE OF LOUISIANA

VS.

JOHN BURRELL GARNER, VERNON JOHNNIE JORDON

---

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were present in court represented by counsel. The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, John Burrell Garner and Vernon Johnnie Jordon, to pay a fine of \$100.00 and costs, or in default of payment thereof to be confined in the parish jail for ninety days, and in addition thereto be confined in the parish jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of

the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel for the accused until July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the [fol. 54] accused released on their present bonds pending the application for said writs.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, John Burrell Garner and Vernon Johnnie Jordan, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons assigned, found each of the defendants guilty of disturbing the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the

Court and opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

—2—

Be It Further Remembered, that the defendants, John Burrell Garner and Vernon Johnnie Jordan, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned, overruled the Motion for a New Trial, to which ruling of the Court Counsel for the defendants did then and there [fol. 56] except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, John Burrell Garner and Vernon Johnnie Jordan, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish jail for Ninety (90) days, and in addition thereto be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the said defendants did then and there except and reserve a formal Bill of Exception, and requested that the defendants be released on their present bonds and gave notice to the Court and opposing Counsel of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, John Burrell Garner and Vernon Johnnie Jordan, through their Attorneys of Record, having submitted this their Bill of Exceptions to the District Attorney, now tenders the same to the Court and pray that

the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court  
of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 57]

IN THE SUPREME COURT OF LOUISIANA

Number 45338

STATE OF LOUISIANA, Appellee

VERSUS

JOHN B. GARNER, et al., Defendants-Appellants

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND  
PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE  
NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST  
BATON ROUGE, STATE OF LOUISIANA

HONORABLE FRED S. LEBLANC, JUDGE, PRESIDING

To the Honorable, Chief Justice and Associate Justices  
of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of  
John Burrell Garner and Vernon Johnnie Jordan (here-  
inafter referred to as "Relators") applying for Writs of  
Certiorari, Mandamus and Prohibition, with respect repre-  
sents:

—1—

That relators show that this cause was previously before  
this Honorable Supreme Court on an "Application For

Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,214, State of Louisiana, Appellee, versus John B. Garner, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,214, State of Louisiana, Appellee, versus John B. Garner, et al., Defendants-Appellants, and make same a part hereof by reference thereto, the same as if written herein "in extenso".

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators herein, neither of them, were ever ordered to move [fol. 58] from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, by an agent thereof as so alleged in the Bill of Information under which your relators herein are charged; that the owner, Mr. Riggs P. Willis, of the said Drug Store testified that your relators herein occupied two (2) seats and their presence there caused him to approach them and advise them that they could not serve them (Tr. 2 and 3) as counter-distinguished from being ordered to move from said cafe counter seats as so alleged in the Bill of Information under which your relators are charged; that the evidence clearly established that your relators were arrested and so charged, criminally, because they were members of the Negro Race and were at the time of their arrest occupying seats at said cafe counter which were, by owner, reserved for white people only (Tr. 3 and 8).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally

guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same is if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

[fol. 59] Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,568, State of Louisiana versus John B. Garner, et al., and that the said decrees or judgments of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.



[fol. 60]  
 State of Louisiana  
 Parish of East Baton Rouge

# **AFFIDAVIT**

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones.

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.

[fol. 62]

# **BRIEF**

May It Please the Court:

## **The Opinions of the District Court**

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for



oral reasons assigned, found your relators, John Burrell Garner and Vernon Johnnie Jordan, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be confined in the Parish Jail for Thirty (30) days, the latter part of this [fol. 63] sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

### Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

### Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor

matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 528 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced [fol. 64] as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and

discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuance and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

Your relators, John Burrell Garner and Vernon Johnnie Jordan, are both Negro college students, having been charged with, tried and sentenced for the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime on the 29th day of March, 1960, by refusing to move from a cafe counter seat at Sitman's Drug Store, 301 Main Street, Baton Rouge, Louisiana, after having been ordered to do so by an agent thereof. However, the evidence adduced on the trial of this cause established that the owner of the said Store advised your relators that they could not be served because they were members of the Negro Race, and that said Store only [fol. 65] provide facilities to serve members of the White

Race (Tr. 2, 3 and 8) as counter-distinguished from being ordered to move from a cafe counter seat as so alleged in the Bill of Information under which relators are charged.

### • Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, relators were never ordered to move as so alleged in the Bill of Information, but that, relators were advised by the owner of said Store that they could not be served for lack of facilities provided for members of the Negro Race.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence; that it denies and deprives your relators of their rights, privileges, immunities and liberties, due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States.
3. That for reasons aforesaid, the Honorable Trial Court erred in overruling your relators' Motion For a New Trial.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

### Issue

Whether or not the mere act of conduct of your relators, Negro college students, sitting in seats at a cafe counter reserved, by custom, for White people constitute a crime within meaning and contemplation of or whether or not the said act of conduct of your relators is a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional, depriving your relators of their rights, privileges, liberties and immunities and denying them due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States?

### Argument

The evidence adduced on the trial of this cause, without equivocation, established that your relators were merely advised by the owner of the said Store that they could not be served for lack of facilities provided for members of the Negro Race (Tr. 2, 3 and 8) as counter-distinguished from being ordered to move as so alleged in the Bill of Information. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that [fol. 66] person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Herewith, relators file an original duplicate copy of the "Transcript of Testimony" of the evidence adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960, and make same a part hereof as if written herein "in extenso."

### Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced within the meaning and contemplation of LSA-R. S. 14:103 (7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, John Burrell Garner and Vernon Johnnie Jordan, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud,  
By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 67]

IN THE SUPREME COURT OF LOUISIANA  
New Orleans

By Hawthorne, J.:

No. 45,338

STATE OF LOUISIANA

v.

JOHN B. GARNER, et al.

OPINION AND JUDGMENT—October 5, 1960

In re: John Burrell Garner and Vernon Johnnie Jordan  
applying for writs of certiorari, mandamus and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The ruling of the district judge on matters of law are not erroneous. See *Town of Pontchatoula vs. Bates*, 173 La. 824, 138 So., 851.

FWH, JBH, EHMCC, WBH, RAV, LPG, HFT.

[fol. 68]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER  
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of John Burrell Garner and Vernon Johnnie Jordan, defendants in the above numbered and entitled cause, with respect represents:



—1—

That the decree of this Honorable Court, rendered October 5, 1960, refusing their Application For Writs of Certiorari, Mandamus and Prohibition and, thus, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, Division "A", is final, there being no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving them of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—3—

Petitioners aver that the opinion and decree of this [fol. 69] Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of the State of Louisiana and by the 14th Amendment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R.S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.



-5-

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of this Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days [fol. 70] in which to prepare and file in the Supreme Court of the United States their Application for a writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be withheld accordingly.

And for all general and equitable relief.

Attorneys for Petitioners: Johnnie A. Jones, A. P. Tureaud.

*Duly sworn to by Johnnie A. Jones and A. P. Tureaud,  
jurats omitted in printing.*

---

### Order

Let petitioners be granted a stay of execution of the decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

— New Orleans, Louisiana, October 7th, 1960.

[fol. 70a] Praeipe (omitted in printing).

[fol. 71] Clerk's Certificate to foregoing transcript  
(omitted in printing).

[fol. 73]

**SUPREME COURT OF THE UNITED STATES**

**No. 617, October Term, 1960**

**JOHN BURRELL GARNER, et al., Petitioners,**

**VS.**

**LOUISIANA.**

**ORDER ALLOWING CERTIORARI—March 20, 1961**

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 618 and 619 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

APPROPRIATE  
RECORDS OFFICE U.S.

RECORDS OF RECORD

of the United States

RECORDS OF RECORD

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 618

MARY BRISCOE, ET AL., PETITIONERS,

vs.

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA

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[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**INFORMATION—Filed April 27, 1960**

Ralph L. Roy Assistant District Attorney of the nineteenth Judicial District of the State of Louisiana, who, in name and by authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

- |                             |                          |
|-----------------------------|--------------------------|
| 1. Mary Briscoe (CF)        | 5. Lawrence Hurst (CM)   |
| 2. Eddie C. Brown, Jr. (CM) | 6. Sandra Ann Jones (CF) |
| 3. Larry L. Nichols (CM)    | 7. Mack Jones (CM)       |
| 4. Charles L. Peabody (CM)  |                          |

late of the Parish of East Baton Rouge, on the Twenty-ninth day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Greyhound Restaurant; said conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 2]

[File endorsement omitted]

## NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 35566

STATE OF LOUISIANA

VERSUS

1. MARY BRISCOE (CF) Southern University
2. EDDIE C. BROWN, JR. (CM) 417 W. Grant
3. LARRY L. NICHOLS (CM) Southern Univ.
4. CHARLES L. PEABODY (CM) Southern Univ.
5. LAWRENCE HURST (CM) 8148 James St.
6. SANDRA ANN JONES (CF) Southern Univ.
7. MACK JONES (CM) 1654 Snipe St.

## INFORMATION

## DISTURBING THE PEACE

Filed April 27 A. D., 1960

Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.

Assistant District Attorney

## WITNESSES:

Chief Arrighi, Capt. Weiner, Lt. Martin, Sgt. Defez.

4/27/60

4/29/60



[fol. 3]

## IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number .....

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to answer to the Bill of Information, and plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

Describe the act or acts the defendants allegedly unlawfully committed in violation of Article 103 of the Louisiana Criminal Code in such manner as to unreasonably disturb the public.

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose presence the acts or offenses were committed in such a manner [fol. 4] as to unreasonably disturb the public.

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Greyhound Restaurant, and by whose authority and/or under what authority the agent of the Greyhound Restaurant was acting when said agent ordered the defendants to move from a cafe counter seat at the said Greyhound Restaurant.

—8—

State the reasons or causes for the agent of the said Greyhound Restaurant to request or ask the defendants to move from a cafe counter seat at or in said Greyhound Restaurant and by whose authority and/or under what authority was the said agent of said Greyhound Restaurant acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said Greyhound Restaurant.

—9—

State whether or not the agent of the said Greyhound Restaurant requested the defendants to move from a cafe

counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said Greyhound Restaurant was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances or regulations of the City of Baton Rouge, Louisiana, or whether or not the said agent of the said Greyhound Restaurant was acting under the laws, ordinances, regulations, customs and/or usages of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

Attorney for Defendants: Johnnie A. Jones.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones, Mack Jones.

[fol. 6] *Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr., et al., jurats omitted in printing.*

[File endorsement omitted]

[fol. 7]

## IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

## PROPOSED ORDER GRANTING BILL OF PARTICULARS

Let Honorable J. St. Clair Favrot, District Attorney of the Parish of East Baton Rouge, State of Louisiana, be and he is hereby Ordered to furnish the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, the Particulars requested in the foregoing application, within ..... days from the date hereof.

Baton Rouge, Louisiana, this ..... day of April, 1960.

\_\_\_\_\_, Judge, 19th Judicial District Court of Louisiana.

[fol. 8]

## IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

## MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, the defendants in the above entitled and numbered cause, move

to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Greyhound Restaurant after having been ordered to do so by the agent of Greyhound Restaurant, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which set forth and enumerated in and/or under LSA-R. S. 14:103 [fol. 9] of 1950, as amended.

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace: that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Greyhound Restaurant is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that

"the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Greyhound Restaurant constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated at Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they,

each, are concerned, be declared null and void, and that they, each, be discharged therefrom.

Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Attorney for Defendants: Johnnie A. Jones.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones, Mack Jones.

[fol. 11] *Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr., et al., jurats omitted in printing.*

[File endorsement omitted]

[fol. 12]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

Bill of information filed.

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

No. 35,566

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.



No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,568

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

These cases came before the court on application for bills of particulars filed herein on behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

**MINUTE ENTRY DENYING APPLICATIONS FOR  
BILLS OF PARTICULARS, ETC.**

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these

[fol. 13] cases for bills of particulars on behalf of these defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P.M.

**MINUTES OF THE COURT—Friday, April 29, 1960**

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

**No. 35,566**

---

**STATE OF LOUISIANA,**

**VS.**

**MARY BRISCOE, et al.**

---

**No. 35,567**

---

**STATE OF LOUISIANA,**

**VS.**

**JANNETTE HOSTON, et al.**

---

**No. 35,568**

---

**STATE OF LOUISIANA,**

**VS.**

**JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.**

---

### MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, rendered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intentions to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this date in which to apply for writs.

[fol. 14]

No. 35,566—Criminal Docket

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

### MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 15] [File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS—  
Filed April 29, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants in the above entitled and numbered cause, respectfully notify and inform this Honorable Court that defendants will apply to the Supreme Court of the State of Louisiana in the above numbered and entitled case for Writs of Certiorari, Mandamus and Prohibition, and such other Writs as may be necessary to have the judgment of Your Honor which denied, rejected and/or overruled the defendants' "Motion to Quash" reversed, set aside and/or declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 16]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on Wednesday, April 27, 1960, the Application for Bill of Particulars was argued and submitted and the Court for oral reasons assigned, rendered Judgment denying the Application for Bill of Particulars in this case, to which ruling of the Court Counsel for the Defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, did then and there except and reserve a formal Bill of Exceptions thereto, asking that the Application filed in this case for Bill of Particulars on behalf of the said defendants, and the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29, 1960, the defendants' Motion to Quash was argued and submitted, and the Court, for oral reasons assigned, rendered Judgment denying the Motion to Quash to which ruling of the Court Counsel for the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, did then and there except and reserve a formal Bill of Exceptions, and ask that the Court's ruling be made a part of the record; that the Bill of Information be made a part

of the record and that defendants' Motion to Quash be made a part of the record.

[fol. 17] The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court  
of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureaud, By: Johnnie A. Jones.

[fol. 18]

IN THE SUPREME COURT OF LOUISIANA

Number 45212

STATE OF LOUISIANA, Appellee,

versus

MARY BRISCOE, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PRO-  
HIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE  
NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST  
BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of  
Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,

Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103(7) of 1950, as amended, in that, allegedly on the 29th day of March, 1960, your relators refused to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Greyhound Restaurant; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

[fol. 19]

—2—

That your relators, each, alleged and averred that they are members of the Negro race and were on the 29th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and placed under a Fifteen Hundred (\$1500) Dollar bond, each.

—3—

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their



rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Greyhound Restaurant in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, [fol. 20] enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash; that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number [fol. 21] 35,566, State of Louisiana, Appellee versus Mary Briacoe, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may

have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

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[fol. 22] State of Louisiana  
Parish of East Baton Rouge

#### AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

**BRIEF**

**May It Please the Court:**

**The Opinions of the District Court**

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Particulars" and the "Motion to Quash."

**Jurisdiction**

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

**Syllabus**

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to

be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter called "Relators"), are Negro college students charged with the

crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the "Bill [fol. 25] of Information" charges the relators with having committed a crime by refusing to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by the agent of the said Greyhound Restaurant, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.



### Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently, erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 26]

### Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

### Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that



defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

### Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 28]

REMEDIAL WRIT

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 45212

STATE OF LOUISIANA

versus

MARY BRISCOE, et al.

OPINION AND JUDGMENT—Filed May 9, 1960

In Re Mary Briscoe et al.

Applying for writs of certiorari, mandamus and prohibition.

Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.

J. St. Clair Favrot, District Attorney, Attorney for Respondents.

Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.

FWH, JBH, EHMcC, JDG, WBH, RAV, LPG.

[fol. 29]

## IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

## APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

"...; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . ."

[fol. 30] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus

and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 31]

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

May It Please The Court:

ARGUMENT

Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

"Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction."

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 32] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and *State v. Christine*, 118 So (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court held:

"An act of conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute."

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 33] Certificate of Service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered—See Rule XII Sec. 5 Rules of this Court. May 24, 1960

**FWH, JBH, EHMcC, JDG, RAV, LPG."**

[fol. 34] Praeeipe (omitted in printing).

[fol. 36] [File endorsement omitted]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT**

**PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

**DIVISION "A"**

**Number 35,566**

**STATE OF LOUISIANA**

**VS.**

**MARY BRISCOE, et al.**

**Transcript of Hearing  
Heard on the Merits June 2, 1960**

**Honorable Fred S. LeBlanc, Judge Presiding**

**APPEARANCES:**

**Ralph L. Roy, Esq., for the State.**

**Johnnie A. Jones, Esq., A. P. Tureaud, Esq., for the Defendants.**

**Reported by: Betty Brady**

[fol. 38] Counselor Jones: We wish that the record show that we reserve all and any rights we might have under

our application for writs of certiorari, mandamus and prohibition that have been denied and the application for rehearing presently pending.

---

MARILYN FLETCHER, called as a witness on behalf of the State, having been duly sworn, testified as follows:

Direct examination.

By Counselor Roy:

Q. Your full name please?

A. Marilyn Marie Fletcher.

Q. Is that Miss or Mrs.?

A. Miss.

Q. Miss Fletcher, where are you presently employed?

A. Greyhound Bus Station.

Q. And were you so employed on March 29th of 1960?

A. At the Greyhound Bus Station.

Q. What kind of work do you do over there?

A. I am a waitress.

Q. Were you working there on March 29th of this year?

A. Yes, sir.

Q. And did anything unusual happen there that day?

A. Well, there were five men and two women who walked in there.

Q. Is that these people seated over here?

A. Yes, sir.

Q. All right. Tell the judge what happened.

A. They came in there and they sit down on the front seven seats and they start ordering and I told them they would have to go to the other side to be served.

[fol. 39] Q. Why did you tell them that?

A. Because we are supposed to refuse the service of anyone that comes in there that is not supposed to be on that side.

Q. And who is not supposed to be on that particular side?

A. The colored people are supposed to be on the other side.



Q. Those seats where they were seated are reserved for white people?

A. Yes, sir.

Q. And your instructions are to just let white people sit there, is that correct?

A. Yes, sir.

Q. All right, go ahead.

A. They came there and they said they wanted something and I told them that they would have to go to the other side to be served, and just kept sitting there and so we called the police and told them to come get them.

Q. Were you there when the police got there?

A. Yes, sir.

Q. Did you hear what the police told them and what they told the police?

A. Yes, sir.

Q. What transpired?

A. They said they would give them a chance to get up and go or either they would have to go to jail.

Q. And what happened?

A. And so they just kept sitting there and they took them to jail.

Q. And all of these were seated down on those seats reserved for white people?

A. Yes.

Q. And you told them you couldn't serve them and asked them to move, is that correct?

A. Yes, sir.

[fol. 40] Q. And when they refused to move you called the officers?

A. Yes, sir.

Q. And as an employee there you had those instructions to keep these seats for white people, is that correct?

A. Yes, sir.

Cross examination.

By Counselor Jones:

Q. Miss Fletcher, is that the only reason you asked them to leave is because they were Negroes?

A. Yes, sir.

Q. That's the only reason?

A. Uh-huh.

Q. They hadn't done anything other than sit in those seats which you all had reserved for whites, is that correct?

A. Yes.

Q. Would you mind telling me, Miss Fletcher, whether or not you had a sign on the counter saying for white only?

A. We had the sign up at the top where it says "Refuse service to anyone."

Q. Refuse service to anyone?

A. Uh-huh.

Q. That's whether they are white or black, is that right?

A. Yes.

Q. But the only reason why you refused these students here service, or these defendants service, is because they were members of the Negro race, is that right?

A. Uh-huh.

Q. Is that the only reason why you refused them service is because they were members of the Negro race?

A. Yes.

Q. Now, would you mind telling me, Miss Fletcher, [fol. 41] whether or not you had orders to do that from your boss or from your superior?

A. She told us—she didn't tell us anything, she just said for us to refuse service to anyone, and they came in there and sit down and we have a place on the other side for them to be served at, and they came in there and sit down and I told them they would have to go to the other side to be served.

Q. Now, I don't think you quite understand my question. Now, I asked did you have orders from your superiors or your boss to refuse service to these students because they were Negroes?

A. No.

Q. Refuse it to anybody?

A. Uh-huh.

Q. Now, when you say "anybody," who was anybody?

A. Well, if you all come in and you sit down and we tell you all you have to go to the other side to be served, you all are supposed to go over there because that's where we have the place for you all to be served at.

Q. When you say anybody you meant Negroes?

A. Uh-huh.

Q. Beg your pardon?

A. Yes.

Q. So when you used the word "anybody," by anybody you meant Negroes?

A. Uh-huh.

Q. That will be yes, is that right?

A. Yes.

Q. Now, did these defendants do anything other than sit in those seats where you ordered them removed from?

A. They ordered something and they were told after they ordered something that they would have to go to the other side to be served.

[fol. 42] Q. And that's all they did?

A. Uh-huh.

Q. They didn't do anything else?

A. That's right.

Q. That's all they did?

A. Uh-huh.

Q. You are positive of that?

A. (The witness did not answer the question.)

By the Court:—

Q. As I recall your direct testimony you stated, and if I am not correct correct me, that after they ordered the food you told them that you couldn't serve them, that they had to go over to the other side reserved for colored people, is that right?

A. Yes, sir, that's right.

Q. Did they go over there?

A. No, sir.

Q. Did they refuse to go?

A. Yes, sir, they just sit there.

Q. And who called the officers?

A. One of the bus drivers that was up there, they called them. They were sitting over there in a booth when they came in and they called them.

Q. Was there a place reserved for colored people in this same building?

A. Yes, sir.

Q. That's the Greyhound Bus Station?

A. Yes, sir.

Q. Was it adequate to serve these people, was it large enough to serve these people?

A. Yes, sir.

[fol. 43] Q. At one time?

A. Yes, sir.

By Counselor Tureaud:

Q. Were there any other people waiting to be served while they sat there?

A. No.

Witness excused.

---

CAPTAIN ROBERT WEINER, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counselor Roy:

Q. Your name please.

A. Robert Weiner.

Q. And what do you do?

A. I am a captain with the police department.

Q. Did you have occasion on March 29th of 1960 to go to the Greyhound Bus Station here in this city at 212 St. Phillips Street and participate in an investigation involving these students seated here?

A. I did.

Q. Tell the court exactly what you did.

A. Inspector E. O. Bauer, Jr. of the police department and myself—the desk sergeant had received a call from some woman at the Greyhound Bus Station that there were several colored people sitting at the lunch counter. In the absence of the Chief of Police, Inspector E. O. Bauer, Jr. and myself proceeded to the bus station with some officers and saw these people sitting at the lunch counter.

Q. Any particular lunch counter? Was it a lunch counter [fol. 44] reserved for colored people or white people?

A. No, the lunch counter was reserved for white people.

Q. Anyway what, if anything, did you do?

A. Well, Inspector Bauer talked to one of the group.

Q. Did you hear what was said?

A. No. And then he talked to them the second time and then he told them that they were under arrest. He called the officers in from outside, they were waiting outside, they came into the white side of the bus station where these people were sitting and they placed them under arrest.

Q. What for?

A. For disturbing the peace.

Q. Well I mean what was the purpose of your going over there?

A. Well we were called because of the fact that they were sitting in a section reserved for white people.

Q. And were they sitting there when you got there?

A. They were.

Q. Did you ask them to move?

A. We did.

Q. You gave them an opportunity to get up and leave?

A. That's right.

Q. And did they.

A. No.

Q. Were they all together.

A. That's right.

Q. These here?

A. That's right.

Q. Was there any response to your order or your request then for them to move, did they say anything and if so what?

A. No, they didn't say anything that I know of.

Q. And they remained seated?

[fol. 45] A. That's right.

#### Cross examination.

By Counselor Jones:

Q. Officer, when you asked them to go, that they were under arrest, did they get up and go with you?

A. Yes.

Q. They came along peacefully, did they not?

A. Yea.

Q. Officer, you testified that they were seated at this cafe counter seat in the section or the side that was reserved for white, is that correct?

A. That's right.

Q. Now, how did you know that this particular side in which they were sitting was reserved for whites?

A. Well, it is pretty obvious from the people there.

Q. From the people there? These students were they, were they not sir?

A. That's right.

Q. These defendants, they were there, weren't they?

A. That's right.

Q. They are not white?

A. No, they sure aren't.

Q. And that's the way you determined it was reserved for white because of the people that were there?

A. That's right.

Q. Why did you arrest them, officer?

A. Because according to the law, in my opinion, they were disturbing the peace.

Counselor Tureaud: I object to the—

[fol. 46] Counselor Roy: Well, he asked the question.

The Court: He asked why and he can explain why. As an officer he was asked why he made the arrest and I think he can explain why.

Q. What was your answer to that officer?

A. That in my opinion they were disturbing the peace.

Q. Within your opinion. Explain your opinion.

A. The fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community.

Q. Was there any sign saying that this counter and this seat in which they were sitting was reserved for white, sir?

A. No, I hadn't noticed any sign.

Q. You didn't see any?

A. No.

Q. The fact that you didn't see any there, would you say one was or was not there?

A. I didn't see any.

Q. The fact that you didn't see any sign saying reserved for whites or for colored, would you say one was there or was not there?

The Court: That would call purely for an opinion on his part. If he didn't see any he is not competent to testify whether one was there. The only way he would know it—

Counselor Jones: I withdraw that question, Your Honor. [fol. 47] The Court: If he didn't observe it visually he would know it by hearsay, which would be inadmissible.

Counselor Jones: I withdraw that question.

By the Court:

Q. These defendants, can you identify all of them?

A. Yes, sir.

Q. And while you were there they were requested to leave?

A. Yes, sir.

Q. By you or by Major Bauer?

A. By Major Bauer.

Q. In your presence?

A. Yes, sir.

Q. And I think you testified that you didn't know whether they said anything or not, these defendants, but that they did refuse to leave?

A. The first time they were asked to, yes, sir.

Q. You don't recall whether they said anything at all?

A. No, they just sat there.

Q. Was it at that time that you and the officer, the other officer, informed them that they were under arrest?

A. We placed them under arrest, Major Bauer and myself. The two officers who were there with the patrol wagon remained outside until we called them in.

Q. But what I want to clear up, I think it is fairly clear but I want to go over it again, you requested these defendants to leave the counter or the stools that they were sitting on before you arrested them?

A. That's right, sir.



[fol. 48] Q. And they refused to leave?

A. That's right.

Q. And that's when you made the arrest?

A. That's right.

Redirect examination.

By Counselor Roy:

Q. And officer, you were doing—what you were doing you were doing pursuant to a complaint which originated from this bus station?

A. That's right, we received a call from one of the women working there.

Recross examination.

By Counselor Jones:

Q. You requested them to move then because they were colored, is that right, sitting in those seats?

A. We requested them to move because they were disturbing the peace.

Q. In what way were they disturbing the peace?

A. By the mere presence of their being there.

Witness excused.

Mr. Roy: The State rests in chief.

Counselor Jones: That's all, Your Honor.

#### FINDING OF GUILT

The Court: All of the accused stand up. The State has introduced testimony of two witnesses in this case which is not disputed at all by the defense. In fact there is no evidence by the defense, and under this Article 103, Sec- [fol. 49] tion 7, the one that they are charged under, it is the decision of the Court that they are guilty as charged for the reason that from the evidence in this case their actions in sitting on stools in this place of business when they were requested to leave and they refused to leave; the officers were called, the officers requested them to leave

and they still refused to leave, their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public. The Court is convinced beyond a reasonable doubt from the testimony in the case that these accused are guilty as charged.

Counselor Tureaud: Your Honor, we ask that sentence be deferred, and we wish to take exception to Your Honor's judgment finding them guilty and reserve our rights. The defendants take exception to the ruling of the court and judgment of the court finding them guilty and ask that a formal bill of exception be reserved to Your Honor's ruling and the reasons given by Your Honor for the judgment.

Counselor Jones: We also here and now inform the court that we intend to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition.

The Court: Upon request of counsel, sentence is deferred in this matter until July 5, 1960. In the meantime they will be released on their present bonds.

Testimony closed.

[File endorsement omitted]

[fol. 51]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

STATE OF LOUISIANA

VS.

MARY BRISCOE, EDDIE C. BROWN, JR., LARRY L. NICHOLS,  
CHARLES L. PEABODY, LAWRENCE HURST, SANDRA ANN  
JONES, MACK JONES.

This case came on for trial in accordance with previous assignment, the accused being present in court represented by counsel. Counsel for the accused stated to the court that they wished to reserve any and all rights they may have under the writs of certiorari, mandamus and prohibition that have been denied, and the application for rehearing presently pending.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found the accused guilty of disturbing the peace, as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the Court and to opposing counsel of

their intention to apply to the Supreme Court of Louisiana for writs of certiorari, prohibition and mandamus.

Sentence deferred until July 5, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 52]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendants, neither of them, were ever ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, by an agent of the said Greyhound Restaurant as so alleged in the Bill of Information under which the said defendants are charged; that the agent, a waitress employee, merely told the said defendants that they, defendants, would have to go to the other side to be served (Tr. 3); that the said agent or waitress employee told the defendants that they would be served on the other side because the colored people were supposed to be on the other side and that the defendants were seated at the said cafe counter in seats

reserved for white people, notwithstanding, that there was no such sign designating such reservation of seats (Tr. 4 and 5).

—2—

That it is clearly shown by the evidence adduced on the [fol. 53] trial of this case that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges and avers that the defendants refused to move from a cafe counter seat at said Greyhound Restaurant after having been ordered to do so by the agent thereof as distinguished from being told that they, defendants, would be served on the other side where, assumingly, there were seats reserved for colored people or members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,  
Charles L. Peabody, Lawrence Hurst, Sandra Ann  
Jones, Mack Jones.

Attorneys for Defendants: Johnnie A. Jones and  
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 54] *Duly sworn to by Mary Briscoe and Eddie C. Brown, Jr. et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

---

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

---

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were this day present in court represented by counsel.

The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the Court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, to pay a fine of \$100.00 and costs, or in default of payment thereof to be confined in the parish jail for ninety days, and in addition thereto to be confined in the parish

jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel for the accused until [fol. 56] July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the accused released on their present bonds pending the application for said writs.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 57]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons assigned, found the defendants guilty of disturbing



the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the Court and to the opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Prohibition and Mandamus.

—2—

Be It Further Remembered, that the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned, overruled the Motion For a New Trial, to which ruling of the Court Counsel for the defendants [fol. 58] did then and there except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or default of payment thereof to be confined in the Parish jail for Ninety (90) days, and in addition thereto to be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the said defendants did then and there except and reserve a formal Bill of Exception, and requested that the defendants be released on their present bonds and gave notice to the Court and opposing Counsel

of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, through their Attorneys of Record, having submitted this their Bills of Exception to the District Attorney, now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 89]

IN THE SUPREME COURT OF LOUISIANA

Number 45336

STATE OF LOUISIANA, Appellee,

versus

MARY BRISCOE, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,

Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter referred to as "Relators") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That relators show that this cause was previously before this Honorable Supreme Court on an "Application For Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,212, State of Louisiana, Appellee, versus Mary Briscoe, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,212, State of Louisiana, Appellee, versus Mary Briscoe, et al., Defendants-Appellants, and make same a part hereof, by reference thereto, the same as if written herein "in extenso".

[fol. 60]

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators herein, neither of them, were ever ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, by an agent thereof as so alleged in the Bill of Information under which the relators herein are charged; that the evidence clearly establishes that the agent or employee of the said Greyhound Restaurant merely told your relators that they would be served on the other side because the colored people were supposed to be on the other side and that your relators were seated at the said cafe counter in seats reserved for white people, notwithstanding, that there is no such sign designating such reservation of seats (Tr. 3, 4 and 5).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the

Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention [fol. 61] to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,566, State of Louisiana versus Mary Briscoe, et al., and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further

relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

---

[fol. 62] State of Louisiana  
Parish of East Baton Rouge

#### AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relator in the above and foregoing pleadings, that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.

May It Please The Court:

**The Opinions of the District Court**

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correct Extract copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be con-[fol. 64] fined in the Parish Jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correct Extract copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso".

**Jurisdiction**

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.



## Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 523 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable [fol. 65] or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).



"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

Your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, are all Negro college students having been charged, tried and sentenced for and/or with the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime by refusing to move from a cafe counter seat at

Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by an agent thereof, relators' conduct [fol. 66] being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera. However, the evidence adduced on the trial of this cause clearly established that your relators, neither of them, were ever ordered to move from a cafe counter seat at the said Greyhound Restaurant by an agent thereof as so alleged in the Bill of Information under which your relators are charged. The evidence clearly establishes that the agent or employee of the said Restaurant merely told your relators that they would be served on the other side where the Colored people were supposed to be, in that, your relators were seated at the said cafe counter in seats reserved for White people, notwithstanding that there was no such sign designating such reservation of seats (Tr. 3, 4 and 5), which evidence is counter-distinguished from the allegations of the Bill of Information.

#### Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence in that, your relators were never ordered to move but rather were told that they would be served at some other counter reserved for Colored people other than the cafe counter at which they were seated, which counter was reserved for White people only.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, it denies and deprives your relators of their rights, privileges, immunities and liberties guaranteed all citizens of the State of Louisiana and of the United States by Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States.

3. That the Honorable Trial Court erred in overruling your relators' Motion For a New Trial, for reasons, that the verdict of the Honorable Trial Court in finding your relators guilty as charged was contrary to the law and evidence as aforesaid.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

### Issue

Whether or not the mere act of your relators, Negro college students, sitting in seats at a cafe counter reserved for White people by custom and tradition, or otherwise, constitute a crime within the meaning and contemplation of or whether the said act of your re-[fol. 67] lators is a crime embraced within the meaning and contemplation of LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional in that it deprives persons, particularly relators, of their rights, privileges, liberties and immunities guaranteed by the Constitutions of the State of Louisiana and of the United States?

### Argument

As it has been pointed out, your relators were never ordered to move from the said cafe counter seat as so alleged in the Bill of Information, but rather, your relators were told or advised that they would be served at a cafe counter which was reserved for Colored people or members of the Negro Race (Tr. 3, 4 and 5) as counter-distinguished from being ordered to move by an agent of said Restaurant. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Your relators file herewith and make a part hereof the same as if written herein "in extenso" an original duplicate copy of the "Transcript" of which the testimony therein was adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960.

#### Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be [fol. 68] discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 70]

IN THE SUPREME COURT OF LOUISIANA

New Orleans

By Hawthorne, J.:

No. 45,336

---

STATE OF LOUISIANA

v.

MARY BRISCOE, et al.

---

OPINION AND JUDGMENT—October 5, 1960

In re: Mary Briscoe et al.

Applying for writs of certiorari, mandamus and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judge on matters of law are not erroneous. See Town of Pontchatoula vs. Bates, 173 La., 824, 138 So., 851.

FWH, JBH, EHM<sup>c</sup>C, WBH, RAV, LPG, HFT.

[fol. 71]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER  
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of Mary Briscoe, Eddie C. Brown, Jr., Larry  
L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra  
Ann Jones and Mack Jones, defendants in the above num-  
bered and entitled cause, with respect represents:

—1—

That the decree of this Honorable Court, rendered Octo-  
ber 5, 1960, refusing their Application For Writs of Cer-  
tiorari, Mandamus and Prohibition and, thus, affirming  
the verdict and sentence of the Nineteenth Judicial Dis-  
trict Court of Louisiana, Division "A", is final, there being  
no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Hon-  
orable Court deprives them of their rights guaranteed them  
under Article 1, Sections 2 and 3 of the Constitution of  
Louisiana of 1921, and of the First and Fourteenth Amend-  
ments to the Constitution of the United States, depriving  
them of their freedom of speech, liberties, privileges, im-  
munities, due process and equal protection of the law as  
constitutionally guaranteed all citizens of the State of  
Louisiana and of the United States.

[fol. 72]

—3—

Petitioners aver that the opinion and decree of this  
Honorable Court deprives them of their rights guaran-  
teed them under Article 1, Sections 2 and 3 of the Con-  
stitution of the State of Louisiana and by the 14th Amend-



ment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R.S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.

—5—

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of this Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

[fol. 73] Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States their Application for a writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be withheld accordingly.



And for all general and equitable relief.

Attorneys for Petitioners, Johnnie A. Jones, A. P.  
Tureaud.

*Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr.,  
jurat omitted in printing.*

---

**ORDER**

Let Petitioners be granted a stay of execution of the  
decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

New Orleans, Louisiana  
October 7th, 1960

[fol. 74]

IN THE SUPREME COURT OF LOUISIANA

Number 45336

---

STATE OF LOUISIANA, Appellee

versus

MARY BRISCOE, et al., Defendants-Appellants

---

PETITION TO RELEASE EDDIE C. BROWN, JR. FROM CUSTODY  
PENDING HIS APPLYING TO THE SUPREME COURT OF THE  
UNITED STATES AND ORDER GRANTING SAME—October 11, 1960

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of Eddie C. Brown, Jr., one of the defen-  
dants in the above numbered and entitled cause, with re-  
spect represents:

## -1-

That this Honorable Court on Friday, October 7, 1960, granted the defendants in this cause a "Stay of Execution" for a period of sixty (60) days, from said date, October 7, 1960, to apply to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal; that among the defendants in whom favor said "Stay of Execution" was granted, your petitioner herein, Eddie C. Brown, Jr., was and is one of them.

## -2-

That at the time of the granting or issuance of said "Stay of Execution" by this Honorable Court, the said Eddie C. Brown, Jr., the petitioner herein, had been, on the day previously, arrested by the Sheriff of East Baton Rouge Parish, Louisiana, under the conviction and sentence imposed on him by this Honorable Court's affirmance of the Judgment of the Nineteenth Judicial District Court of Louisiana, Division "A".

[fol. 75]

## -3-

That the Honorable Judge Fred S. LeBlanc of the said Nineteenth Judicial District Court of Louisiana, Division "A", has refused and failed to comply with the "Stay of Execution" granted and issued herein by this Honorable Court on October 7, 1960, as it, respectively, relates to the petitioner herein, Eddie C. Brown, Jr.; that the said Eddie C. Brown, Jr. is still in the custody of the Sheriff of the Parish of East Baton Rouge, State of Louisiana, and awaits, to no avail, the said District Judge to order his release.

## -4-

That, therefore, it is necessary that an order by this Honorable Court issue herein, directed to the Honorable Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court, of Louisiana, Division "A", commanding and directing him to order the release of the said Eddie C. Brown, Jr., forthwith, pending his making application to the Supreme Court of the United States for a Writ of Certiorari and

Review, or appeal within sixty (60) days from October 7, 1960.

Wherefore, petitioner, Eddie C. Brown, Jr., prays:

That, after due consideration, an order issue by this Honorable Court, directed to the Honorable Fred S. LeBlanc, Judge, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, Division "A", commanding and directing him to order the release of the said Eddie C. Brown, Jr., from the custody of the Sheriff of said Parish, forthwith, pending his applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal within sixty (60) days from October 7, 1960.

And for all general and equitable relief.

Attorneys for petitioner: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 76] *Duly sworn to by Johnnie A. Jones, jurat omitted in printing.*

---

### Order

Let the said Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court of Louisiana, Division "A", be, and he is hereby ordered, commanded and directed to order the release of the said Eddie C. Brown, Jr. from the custody of the Sheriff of the Parish of East Baton Rouge, State of Louisiana, forthwith, pending his applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal within sixty (60) days from October 7, 1960.

New Orleans, Louisiana, October 11th, 1960.

Jno. B. Fournet, Chief Justice.

[fol. 77] *Praeipice (omitted in printing).*

[fol. 79] *Clerk's Certificates to foregoing transcript (omitted in printing).*

[fol. 81]

**SUPREME COURT OF THE UNITED STATES**

**No. 618—October Term, 1960**

---

**MARY BRISCOE, et al., Petitioners,**

**VS.**

**LOUISIANA.**

---

**ORDER ALLOWING CERTIORARI—March 20, 1961**

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 617 and 619 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY  
SUPREME COURT U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1904

No. 231

JANNETTE HOBSON, ET AL., PETITIONERS,

LOUISIANA.

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA.

RECEIVED FOR THE RECORD OF THE SUPREME COURT, 1904  
CHIEF JUSTICE MARSHALL, 1904



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 619

JANNETTE HOSTON, ET AL., PETITIONERS,

*vs.*

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF LOUISIANA

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[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

INFORMATION—Filed April 27, 1960

Ralph L. Roy Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

- |                         |                         |
|-------------------------|-------------------------|
| 1. Jannette Hoston (CF) | 5. Marvin Robinson (CM) |
| 2. Donald Moss (CM)     | 6. John W. Johnson (CM) |
| 3. Jo Ann Morris (CF)   | 7. Felton Valdry (CM)   |
| 4. Kenneth Johnson (CM) |                         |

late of the Parish of East Baton Rouge, on the Twenty-eighth day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Kress' Store at North Third Street and Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress' Store; said conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 2]

[File endorsement omitted]

**NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

**No. 35567**

---

**STATE OF LOUISIANA versus**

1. JANNETTE HOSTON (CF) Southern University (all)
2. DONALD MOSS (CM)
3. JO ANN MORRIS (CF)
4. KENNETH JOHNSON (CM)
5. MARVIN ROBINSON (CM)
6. JOHN W. JOHNSON (CM)
7. FELTON VALDRY (CM)

---

**INFORMATION**

**DISTURBING THE PEACE**

**Filed April 27 A. D., 1960**

**Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.**

**Assistant District Attorney**

**WITNESSES:**

**Mr. R. R. Matthews, Mgr., Kress, Chief Arrighi, Captain Weiner, Off. Jeffries, J. Paul, L. Devall, G. Watts.**

[fol. 3]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number .....

STATE OF LOUISIANA,

vs.

JANNETTE HOSTON, et al.

## APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

Describe the act or acts the defendants allegedly unlawfully committed in violation of Article 103 of the Louisiana Criminal Code in such manner as to unreasonably disturb the public.

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose pres-

ence the acts or offenses were committed in such a manner [fol. 4] as to unreasonably disturb the public.

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Kress' Store, and by whose authority and/or under what authority the agent of the Kress' Store was acting when said agent ordered the defendants to move from a cafe counter seat at the said Kress' Store?

—8—

State the reasons or causes for the agent of the said Kress' Store to request or ask the defendants to move from a cafe counter seat at or in said Kress' Store and by whose authority and/or under what authority was the said agent of said Kress' Store acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said Kress' Store.

—9—

State whether or not the agent of the said Kress' Store requested the defendants to move from a cafe counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said Kress' Store was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances or regulations of the City of Baton Rouge, Louisiana, or whether or not the said agent of the said Kress' Store was acting under the laws, ordinances, regulations, customs and/or usages

of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorney for Defendants;                      Johnnie A. Jones.

[fol. 6] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 7]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-

vin Robinson, John W. Johnson and Felton Valdry, the defendants in the above entitled and numbered cause, move to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Kress' Store after having been ordered to do so by the agent of Kress' Store, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which set forth and enumerated in and/or under LSA-R. S. 14:103 [fol. 8] of 1950, as amended.

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace; that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Kress' Store is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that

"the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Kress' Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 28th day of March, 1960, college students matriculated in Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 28th day of March, 1960, "sit in" a cafe counter seat reserved [fol. 9] for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they, each, are concerned, be declared null and void, and that they, each, be discharged therefrom.



Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorney for Defendants: Johnnie A. Jones.

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[fol. 10] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]

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[fol. 11]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

Bill of information filed.

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,566

---

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

---

No. 35,567

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

---

No. 35,568

---

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.

---

These cases came before the court on application for bills of particulars filed herein on behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

**MINUTE ENTRY DENYING APPLICATIONS FOR  
BILLS OF PARTICULARS, ETC.**

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these

[fol. 12] cases for bills of particulars on behalf of these defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P.M.

**MINUTES OF THE COURT—Friday, April 29, 1960**

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

**No. 35,566**

---

**STATE OF LOUISIANA,**

**VS.**

**MARY BRISCOR, et al.**

---

**No. 35,567**

---

**STATE OF LOUISIANA,**

**VS.**

**JANNETTE HOSTON, et al.**

---

**No. 35,568**

---

**STATE OF LOUISIANA,**

**VS.**

**JOHN BURRELL GARNER,  
VERNON JOHNNIE JORDON.**

---

### MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, rendered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this date in which to apply for writs.

[fol. 13]

No. 35,567—Criminal Docket

STATE OF LOUISIANA,

vs.

JANNETTE HOSTON, et al.

### MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 14]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS—  
Filed April 29, 1960

To the Honorable, The Judges of the Nineteenth Judicial  
District Court, in and for the Parish of East Baton  
Rouge, State of Louisiana:

And now into this Honorable Court come Jannette Hos-  
ton, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-  
vin Robinson, John W. Johnson and Felton Valdry, de-  
fendants in the above entitled and numbered cause, re-  
spectfully notify and inform this Honorable Court that  
defendants will apply to the Supreme Court of the State of  
Louisiana in the above numbered and entitled case for  
Writs of Certiorari, Mandamus and Prohibition, and such  
other Writs as may be necessary to have the judgment of  
Your Honor which denied, rejected and/or overruled the  
defendants' "Motion to Quash" reversed, set aside and/or  
declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.  
P. Tureau, By: Johnnie A. Jones.

[File endorsement omitted]

[fol. 15]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, The Judges of the Nineteenth Judicial  
District Court, in and for the Parish of East Baton  
Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on  
Wednesday, April 27, 1960, the Application for Bill of  
Particulars was argued and submitted and the Court for  
oral reasons assigned, rendered Judgment denying the Ap-  
plication for Bill of Particulars in this case, to which rul-  
ing of the Court Counsel for the Defendants, Jannette Hos-  
ton, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-  
vin Robinson, John W. Johnson and Felton Valdry, did  
then and there except and reserve a formal Bill of Excep-  
tions thereto, asking that the Application filed in this case  
for Bill of Particulars on behalf of the said defendants, and  
the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29,  
1960, the defendants' Motion to Quash was argued and sub-  
mitted, and the Court, for oral reasons assigned, rendered  
Judgment denying the Motion to Quash to which ruling of  
the Court Counsel for the defendants, Jannette Hoston,  
Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin  
Robinson, John W. Johnson and Felton Valdry, did then  
and there except and reserve a formal Bill of Exceptions,  
and ask that the Court's ruling be made a part of the record;  
that the Bill of Information be made a part of the record

and that defendants' Motion to Quash be made a part of the record.

[fol. 16] The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and  
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 17]

IN THE SUPREME COURT OF LOUISIANA

Number 45213

STATE OF LOUISIANA, Appellee,

versus

JANNETTE HOSTON, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth



Johnson, Marvin Robinson, John W. Johnson and Felton Valdry applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103(7) of 1950, as amended, in that, allegedly on the 28th day of March, 1960, your relators refused to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress' Store; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

[fol. 18]

—2—

That your relators, each, alleged and averred that they are members of the Negro race and were on the 28th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 28th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and placed under a Fifteen Hundred (\$1500) Dollar bond, each.

—3—

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process

in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Kress' Store in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, [fol. 19] enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash; that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number [fol. 20] 35,567, State of Louisiana, Appellee versus Jannette Hoston, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to

this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 21] State of Louisiana  
Parish of East Baton Rouge

#### **AFFIDAVIT**

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

[fol. 22]

**BRIEF****May It Please the Court:****The Opinions of the District Court**

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Particulars" and the "Motion to Quash."

**Jurisdiction**

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

[fol. 23]

**Syllabus**

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to

be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter called "Relators"), are Negro college students charged with the crime



of Disturbing the Peace under the provisions of LSA-[fol. 24] R. S. 14:103(7) of 1950, as amended; that the "Bill of Information" charges the relators with having committed a crime by refusing to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, on the 28th day of March, 1960, after having been ordered to do so by the agent of the said Kress' Store, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 28th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 28th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.



### Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently, erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 25]

### Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

### Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that

act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

### Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 27]

**REMEDIAL WRIT**

**IN THE SUPREME COURT OF THE STATE OF LOUISIANA**

**No. 45213**

**STATE OF LOUISIANA**

**VERSUS**

**JANNETTE HOSTON, et al.**

**OPINION AND JUDGMENT—Filed May 9, 1960**

**In Re Jannette Hoston et al.**

**Applying for writs of certiorari, mandamus and prohibition.**

**Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.  
J. St. Clair Favrot, District Attorney, Attorneys for Respondents.**

**Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.**

**FWH, JBH, EHMcC, JDG, WBH, RAY, LPG.**

[fol. 28]

## IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

## APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

“...; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . .”

[fol. 29] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 30]

## BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

May It Please the Court:

## A R G U M E N T

## Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

"Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction."

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 31] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and *State v. Christine*, 118 So (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court held:

"An act of conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute."

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and

the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 32] Certificate of Service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered—See Rule XII Sec. 5 Rules of this Court. May 24, 1960

FWH, JBH, EHMcC, JDG, RAV, LPG."

[fol. 33] Praeceptum (omitted in printing).

[fol. 35]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Number 35,567

Honorable Fred S. LeBlanc, Judge Presiding

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STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, DONALD MOSS, JO ANN MORRIS, KENNETH  
JOHNSON, MARVIN ROBINSON, JOHN W. JOHNSON, and  
FELTON VALDREY.

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Transcript of Hearing—June 2, 1960

## APPEARANCES:

Ralph Roy, Assistant District Attorney, for the State  
of Louisiana.

Johnnie Jones and A. P. Tureau, for the Defendants.

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[fol. 37] MR. REUBEN REYNOLDS MATHEWS, called as a wit-  
ness on behalf of plaintiff, having been first duly sworn,  
testified as follows:

Direct examination.

By Counsel Roy:

- Q. State your full name please sir?
- A. Reuben Reynolds Mathews.
- Q. Where are you employed?
- A. S. H. Kress and Company.
- Q. How long have you been so employed?
- A. For the company twenty-eight and a half years.



Q. In what capacity do you serve?

A. I am store manager.

Q. Were you the manager on March 28th of this year?

A. I was.

Q. On that particular date did anything unusual happen at the store involving these accused persons seated here to my left?

A. Yes, sir.

Q. What?

A. About two o'clock I was eating lunch at our lunch counter and two girls came and sat by me in the adjoining seats and the men sat down in other seats at the counter, dispersed throughout the counter.

Q. Are these the two girls and the men?

A. Yes, sir.

Q. Where were these seats that they were seated at?

A. I was about the center of the counter and the two girls sat adjoining me and I believe there were two or three men to my right about halfway to the end of the counter and the others were on the other side of me.

Q. What, if anything, happened after that?

A. I finished my meal. One of my waitresses asked if [fol. 38] they should be served and I told her to offer service at the counter across the aisle.

Q. What counter is that across the aisle?

A. Across the store.

Q. What counter is that, is that counter reserved for colored people?

A. Yes, sir, where we have the same menus, same foods and the same service.

Q. Were they seated at the counter reserved for white people?

A. Yes, sir.

Q. And were they served there?

A. No, sir.

Q. Were they requested to move over to the counter reserved for colored people?

A. No, sir.

Q. They weren't asked to go over there?

A. They were advised that we would serve them over there.

Q. Did they go over there?

A. No, they didn't. They continued to sit.

Q. Did they say anything that you heard?

A. Not that I heard.

Q. Then what happened?

A. After I finished my meal I went to the telephone and called the police department.

Q. Why did you call the police department?

A. Because I feared that some disturbance might occur.

Q. Why did you fear that?

A. Because it isn't customary for the two races to sit together and eat together.

Q. Is it customary at Kress' for them to sit together and eat together?

[fol. 39] A. No, sir.

Q. How long have you been there?

A. I have been here a year and a half.

Q. And was that custom prevailing when you got there?

A. Yes.

Q. Was that the custom of the store?

A. For them to eat separately, yes.

Q. They have separate facilities, is that right?

A. Yes.

Q. Then what happened?

A. I advised the police department that they were seated at the counter reserved for whites, and within a short time the officers came in and I observed that they spoke to some of them.

Q. And what happened?

A. They got up, and they called the uniformed officers in from outside, and they all got up and went out.

Q. Now, when was it that they got up?

A. After the officers had talked to them.

Q. Were you there when they talked to them?

A. Yes, but I wasn't within hearing distance though.

Q. Did they all come in together and sit down together in one group or did they come in,—

A. As they approached the counter they were not in one group, separately, possibly in pairs.

Q. When service was offered them at the colored counter they didn't move?

A. No.

Q. And that's why you called the officers?

A. Yes.

Q. When the officers,—did the officers take them away after they talked to them?

[fol. 40] A. Yes, sir.

Q. And did they take them to the counter reserved for colored people or did they take them outside?

A. They took them out of the door on the Main Street side.

Q. You say you have been connected with Kress' for twenty years?

A. Twenty-eight years.

Q. Have you been connected with Kress' down here that long?

A. No, I came here a year and a half ago.

Q. Where were you with them before that?

A. Florida, Texas, California, Tennessee.

#### Cross examination.

#### By Counsel Jones:

Q. Mr. Mathews, do you know what these two ordered at this cafe counter seat,—I mean these defendants?

A. No, sir, I don't know what they ordered.

Q. But you testified that they were sitting there with the whites and it wasn't customary for them to sit and eat at this same counter, is that right?

A. That's correct.

Q. Is it customary that white and colored all come into Kress Store and make other purchases at the same counters at the same time?

A. That's correct.

Q. That's all right, is it not sir?

A. That is correct.

Q. The only thing that is off-limits to them is this particular counter seat?

A. You made the statement. I didn't.

Q. I'm asking you, is the only thing off-limits this cafe counter seat at which they were sitting?

A. The wording "off-limits" is yours.

[fol. 41] Q. But is the only place in Kress' counters restricted to these negro defendants and students or customers of your store this cafe counter seat?

A. The only place where it is not customary for the two to shop together is the lunch counter.

Q. Were there any signs at this cafe counter seat indicating that, sir?

A. No.

Q. How would they have known there was any restriction at this particular cafe counter seat?

A. By custom and by noticing that the colored people were being served at the counter across the store. Also they were advised of that when they took their seats.

Q. Who advised them?

A. The waitresses and the stewards.

Q. Did they advise them under your instructions and according to your order as manager of the store, sir?

A. They advised them, yes.

Q. It was your orders that they be instructed to go to the other counter, is that right?

A. I say they were advised that they would be served at the other counter.

Q. Is that the only reason that you refused to serve them at this particular cafe counter seat because they were members of the negro race?

A. We did not refuse to serve them. I merely did not serve them and told them that they would be served on the other side of the store.

Q. But at this particular side of the store and at this particular counter seat is the only reason you refused to serve them because they were members of the negro race?

[fol. 42] A. We did not refuse to serve them.

Q. I'll repeat this question again. Maybe you don't understand what I'm asking. Did you refuse to serve them,—

A. I did not.

Q. Did you refuse to serve them at the particular cafe counter seat at which they were sitting because they were members of the negro race?

A. As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store.

Q. Let me ask you this question then. Did you serve them at the cafe counter seat at which they were sitting?

A. No, we did not serve them.

Q. Why didn't you?

A. Because it was not customary to serve colored people at that counter.

Q. Did you talk to any of the defendant persons?

A. Not directly.

Q. Did these defendants do anything other than sit at this cafe counter seat that you would consider would be disturbing the peace?

A. No, sir.

Q. Why did you consider their sitting at this cafe counter seat disturbing the peace?

Counsel Roy: I object unless he is familiar with R. S. 14:103, and its sub-sections.

By the Court:

Q. Are you familiar with the law dealing with disturbing the peace?

A. Vaguely.

The Court: I think the objection is good then. He is not a lawyer.

[fol. 43]

By Counsel Jones:

Q. Mr. Mathews, did you consider these defendants disturbing the peace by sitting at this counter?

Counsel Roy: I object your Honor.

The Court: That's a legal conclusion. I sustain the objection.

Q. Did you consider these defendants violating the law while sitting at this cafe counter?

Counsel Roy: I object to that.

The Court: The actions speak for themselves, and it would be asking for this man's opinion on the law and he is not a lawyer.

Q. Do you have any policy in your store with respect to segregation of the races?

A. No, sir.

Q. None at all?

A. None at all.

Q. Then why did you ask these defendants to move from this cafe counter?

The Court: I think he hasn't testified to that. He said he advised them that they would be served elsewhere, over at the other counter. He said he did not refuse to serve them at this particular counter. What he did was, he advised them they would be served over at the other counter. So, you can't assume he has testified to a fact when he has not actually testified to that fact. You can [fol. 44] interrogate him as to why he advised them to go over to that other place.

Mr. Jones: I adopt your Honor's question.

Q. Answer it.

A. Restate it, please.

Q. Why did you advise these defendants to go over to the other cafe counter seats?

A. Because by custom we serve colored people at the other counter.

Q. That's the custom of your store?

A. Right.

Redirect examination.

By Counsel Roy:

Q. That's the custom, not of your store but the custom of your employer, is that right, custom of the people you work for, not your custom?

A. Correct.

**Recross examination.**

**By Counsel Jones:**

**Q.** In asking or advising these defendants to go to the other cafe counter seat did you at any time think that you were acting according to law?

**Counsel Roy:** I object to that.

**The Court:** I sustain the objection.

**By the Court:**

**Q.** Your store is located where, Mr. Mathews?

**A.** Third Street.

**Q.** Is that in the City of Baton Rouge?

**A.** Yes.

**Q.** Parish of East Baton Rouge?

[fol. 45] **A.** Yes.

**Witness excused.**

---

**CAPTAIN ROBERT WEINER**, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

**Direct examination.**

**By Counsel Roy:**

**Q.** State your full name.

**A.** Robert Weiner.

**Q.** You are a Captain at the City Police?

**A.** That's right.

**Q.** Did you have occasion to on March 28th of this year participate in the arrest of these accused persons seated to my left at Kress' Store here in the City of Baton Rouge?

**A.** That's right.

**Q.** Tell the Judge exactly what, if anything, you said to them or what, if anything, was said to them by anyone in your presence preparatory or immediately previous to their arrest?



A. Chief Arrighi and I had gone to the store and we entered the store from the Main Street entrance which was the closest to the lunch counter, and we noticed several of these people sitting at the counter. Chief Arrighi proceeded to the counter where they were sitting and asked them to leave.

Q. What counter were they seated at?

A. They were seated at the lunch counter reserved for the white people. One of the defendants said something about wanting to get a glass of ice tea but she was told they were disturbing the peace and violating the law by sitting there and asked to leave again, and when none of them made a move to get up and leave Chief Arrighi told me to place them under arrest. I went to the door, the Main Street entrance, and called two of the officers who [fol. 46] were waiting outside. They came in. They took these people outside and placed them in the patrol wagon and brought them down to police headquarters.

Q. When they were asked to get up and leave by Chief Arrighi, were they seated at the counter at that time?

A. Yes, they were.

Q. And did they refuse to leave until they were placed under arrest?

A. Yes.

Cross examination.

By Counsel Jones:

Q. How did you know that these particular cafe counter seats were reserved for whites?

A. Because the store had always had this counter reserved for white people. They also have a section where the colored people used to buy their food.

Q. Did you see any signs saying reserved for whites?

A. No, I didn't see any signs.

Q. Did you see any signs saying for white only?

A. No, I didn't see any signs at all.

Q. Did you see any signs saying for colored only?

A. I just said I didn't see any signs at all.

Q. Did you see any negroes in the store at other places than at these counter seats?

A. Oh, there were several negroes in there standing, yes.

Q. Did you arrest them?

A. No, I didn't arrest them.

Q. Why didn't you arrest them?

A. Because I wasn't told to.

Q. Did these defendants do anything other than sit at these particular cafe counter seats that you would consider disturbing the peace or in violation of any law?  
[fol. 47] A. Well, other than the fact that one of them mentioned something about the ice water nothing else was said.

Q. Do I take by that that they hadn't done anything other than sit at these particular cafe counter seats that you considered disturbing the peace?

A. That's the only thing that I saw happen.

Q. The only reason you considered that as disturbing the peace there was because they were members of the negro race, is that right?

A. I was there under orders of Chief Arrighi and Chief Arrighi gave me orders to place them under arrest, which I did.

Q. Did you know why they were placed under arrest?

A. Because they were disturbing the peace according to the law.

Q. How were they disturbing the peace?

A. By sitting there.

Q. By sitting there?

A. That's right.

Q. Were there any other persons sitting there?

A. I don't believe; I don't recall.

Q. It is your testimony their mere sitting there was disturbing the peace, is that right sir?

A. That's right.

Q. And that is because they were members of the negro race?

A. That was because that place was reserved for white people.

Q. Sir, do you know who reserved these particular places for white people?

A. Well, I imagine the stores who own these lunch rooms or whatever the case may be have certain sections,—as I said before this section was reserved for the white people. They also had another section where the negro people were served.

Q. Is it your testimony that because these defendants, [fol. 48] being members of the negro race, sat in these seats reserved for white people constituted,—

Counsel Roy: I object to that. I think it is for this Court to determine if there has been a violation of law.

The Court: It is objectionable because it is not what he considers. He does not pass on the law; he doesn't interpret the law. All he can testify to are the facts he observed, things he saw, heard and witnessed at the scene. Don't ask him to express an opinion based on those facts as to whether or not they were violating the law, because he doesn't interpret the law.

Q. Why did you arrest and place these defendants under arrest?

A. Because I was ordered to do so by the Chief of Police.

By the Court:

Q. Do you identify all of these accused as the ones in Kress Store on that occasion?

A. Yes, sir.

Q. Seated at the counter?

A. Yes, sir.

Q. And they are the ones that the police arrested on that occasion?

A. Yes.

Witness excused.

Counsel Roy: The State rests.

[fol. 49]

#### FINDING OF GUILT

The Court: I ask the defendants to stand up.

(Defendants stood.)

The Court: The evidence in this case put on by the State is not disputed and it is to this effect, that these

accused were in Kress' store in Baton Rouge on the date alleged in the bill of information and that they took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the officers talked to these accused, or some of them, and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I [fol. 50] have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt.

Counsel Turean: We reserve a bill of exception to your Honor's ruling and ask that the bill and your Honor's ruling on the charges be made a part of the bill of exception. We further ask that sentence in this matter be deferred.

Counsel Jones: We now and here inform the Court that we intend to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

The Court: All of these accused are on bond, is that correct?

Counsel Jones: Yes, sir.

The Court: In this matter, in accordance with the request of defense counsel, the Court defers sentence, and meanwhile the accused are to remain on their present bonds, and sentence is deferred until Tuesday, July 5, 1960.

Testimony closed.

[fol. 51]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

---

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, DONALD MOSS, JO ANN MORRIS, KENNETH JOHNSON, MARVIN ROBINSON, JOHN W. JOHNSON, and FELTON VALDEY.

---

This case came on for trial in accordance with previous assignment, the accused, charged with disturbing the peace, being present in court represented by counsel.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court, for oral reasons assigned, found each of the accused guilty as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

Sentence deferred until July 5, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 52]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendants, neither of them, were ever ordered to move from a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, by an agent of said Store as so alleged in the Bill of Information under which the said defendants are charged: that the agent or manager of the said Kress' Store merely advised the said defendants that they would be served at another cafe counter other than the cafe counter at which the said defendants were sitting; that said agent advised the defendants that they would be served at a cafe counter which was customarily reserved for colored people; that the defendants were advised that they would be served at the cafe counter seat reserved for colored people because the defendants were seated at the counter reserved for white people by custom, only.

[fol. 53]

—2—

That it is clearly shown by the evidence adduced on the trial of said cause that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges that the defendants refused to move from a cafe counter seat at the said Kress' Store after having been ordered to do so by the agent of the said Kress' Store as distinguished from being advised that they, defendants, would be served at some other cafe counter, which, by custom, was reserved for colored people or members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorneys for Defendants: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 54] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]



[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

---

STATE OF LOUISIANA

VS.

JANNETTE HOSTON, et al.

---

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were this day present in court represented by counsel.

The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, to pay a fine of \$100.00 and costs, or in default of payment of said fine and costs to be confined in the parish

jail for ninety days, and in addition thereto to be confined in the parish jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and [fol. 56] prohibition. The Court granted counsel for the accused until July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the accused released on their present bonds pending the application for said writs.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 57]

IN THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons

assigned, found each of the said defendants guilty of disturbing the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the Court and to the opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

—2—

Be It Further Remembered, that the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned overruled the Motion for a New Trial, to which [fol. 58]-ruling of the Court Counsel for the defendants did then and there except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment of said fine and costs to be confined in the Parish jail for Ninety (90) days, and in addition thereto to be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the defendants did then and there except and reserve a formal Bill of Exception and requested that the said defendants, each, be released on their present bonds and gave notice to the Court and op-

posing Counsel of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, through their Attorneys of Record, having submitted this their Bill of Exceptions to the District Attorney, now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and  
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 59]

IN THE SUPREME COURT OF LOUISIANA

Number 45337

STATE OF LOUISIANA, Appellee

versus

JANNETTE HOSTON, et al., Defendants-Appellants

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding  
To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of  
Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth

Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter referred to as "Relators") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That relators show that this cause was previously before this Honorable Supreme Court on an "Application For Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,213, State of Louisiana, Appellee, versus Jannette Hoston, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,213, State of Louisiana, Appellee, versus Jannette Hoston, et al., Defendants-Appellants, and make same a part hereof, by reference thereto, the same as if written herein "in extenso".

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators [fol. 60] herein, neither of them, were ever ordered to move from a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, by an agent of said Store as so alleged in the Bill of Information under which your relators herein are charged; that the agent or manager of the said Kress' Store merely advised your relators that they would be served at another cafe counter seat other than the cafe counter seat at which your relators were seated (Tr. 4 and 10); that said agent advised your relators that they would be served at a cafe counter which was customarily reserved for colored people as counter-distinguished from being ordered to move from the cafe counter seat at which your relators were seated as so alleged in the said Bill of Information (Tr. 4, 6, 7, 8, 9, and 10).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1,

Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

[fol. 61] Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,567, State of Louisiana versus Jannette Hoston, et al., and that the said decrees or judgments of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court,



and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 62] State of Louisiana  
Parish of East Baton Rouge

#### AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.



May It Please The Court:

The Opinions of the District Court

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found your relators, Jannette Houston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be [fol. 64] confined in the Parish Jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso".

Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

## Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 528 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable [fol. 65] or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 301 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

#### Statement of the Case

Your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, are all Negro college students having been charged with, tried and sentenced for the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime on the 28th day of March, 1960, by refusing to move from

a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, after having been ordered to do so by an agent thereof. However, the evidence adduced on the trial of this cause established the fact that your relators were never ordered to move from said [fol. 66] cafe counter seat by an agent thereof as alleged in the Bill of Information, but that, your relators were advised by an agent or manager of the said Kress' Store that they would be served at a cafe counter which was customarily reserved for Colored people as counter-distinguished from being ordered to move from the cafe counter seat at which your relators were seated, the seats in which your relators were sitting, by custom, were reserved for White people (Tr. 4, 6, 7, 8, 9 and 10).

#### Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, your relators were merely advised that they would be served at a cafe counter customarily reserved for Colored people as counter-distinguished from being ordered to move from the cafe counter customarily reserved for White people.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence; that it denies and deprives your relators of their rights, privileges, immunities and liberties, due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States.
3. That for reasons aforesaid, the Honorable Trial Court erred in overruling your relators' Motion For a New Trial.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

### Issue

Whether or not the mere act of conduct of your relators, Negro college students, sitting in seats at a cafe counter reserved, by custom, for White people constitute a crime within meaning and contemplation of or whether or not the said act of conduct of your relators is a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional, depriving your relators of their rights, privileges, liberties and immunities and denying them due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States?

### Argument

The evidence adduced on the trial of this cause, without equivocation, established that your relators were merely advised by an agent or the manager of said Store that they would be served at a cafe counter which was, by custom, reserved for Colored people as counter-distinguished from being ordered to move from a cafe counter reserved, [fol. 67] by custom, for White people or as so alleged in the Bill of Information. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Herewith, relators file an original duplicate copy of the "Transcript of Testimony" of the evidence adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960, and make same a part hereof as if written herein "in extenso."

### Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is



insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced within the meaning and contemplation of LSA-R. S. 14 103 (7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 68] Certificate of service (omitted in printing).

[fol. 70]

IN THE SUPREME COURT OF LOUISIANA  
New Orleans

By Hawthorne, J.:

No. 45,337

STATE OF LOUISIANA

v.

JANNETTE HOSTON, et al.

OPINION AND JUDGMENT—October 5, 1960

In re: Jannette Hoston et al. applying for writs of certiorari and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judge on matters of law are not erroneous. See *Town of Pontchatoula vs. Bates*, 173 La., 824, 138 So., 851.

FWH, JBH, EHM<sup>c</sup>C, WBH, RAV, LPG, HFT.

[fol. 71]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER  
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of  
the Supreme Court of the State of Louisiana:

The petition of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants in the above numbered and entitled cause, with respect represents:

—1—

That the decree of this Honorable Court, rendered October 5, 1960, refusing their Application For Writs of Certiorari, Mandamus and Prohibition and, thus, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, Division "A", is final, there being no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving them of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.



[fol. 72]

—3—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of the State of Louisiana and by the 14th Amendment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R. S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.

—5—

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of This Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

[fol. 73] Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States their Application for a Writ of Certiorari or appeal to review the decision of this Honorable

Court and that the mandate and decree of this Honorable Court be withheld accordingly.

And for all general and equitable relief.

Attorneys for Petitioners: Johnnie A. Jones, A. P. Tureaud.

*Duly sworn to by Jannette Hoston, Donald Moss, et al.,  
jurat omitted in printing.*

---

**ORDER**

Let Petitioners be granted a stay of execution of the decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

New Orleans, Louisiana  
October 7th, 1960

[fol. 74] Praecipe (omitted in printing).

[fol. 76] Clerk's Certificates to foregoing transcript  
(omitted in printing).

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[fol. 78]

**SUPREME COURT OF THE UNITED STATES**

**No. 619—October Term, 1960**

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**JANNETTE HOSTON, et al., Petitioners,**

**VS.**

**LOUISIANA.**

---

**ORDER ALLOWING CERTIORARI—March 20, 1961**

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 617 and 618 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

**LIBRARY**  
**SUPREME COURT. U. S.**

Office-Supreme Court, U.S.

**FILED**

**DEC 31 1950**

**JAMES E. BROWNING, Clerk**

IN THE

**Supreme Court of the United States**

October Term, 1960

No. ~~000~~ 26

**JOHN BURRELL GARNER, et al.,**

*Petitioners,*

—v.—

**STATE OF LOUISIANA.**

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

**A. P. TUREAUD**  
1821 Orleans Avenue  
New Orleans, Louisiana

**JOHNNIE A. JONES**  
Baton Rouge, Louisiana

**THURGOOD MARSHALL**  
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*Attorneys for Petitioners*

**WILLIAM COLEMAN, JR.**  
**LOUIS H. POLLAK**  
**ELWOOD H. CHISOLM**  
**JAMES M. NABRIT, III**  
*Of Counsel*

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IN THE  
**Supreme Court of the United States**

October Term, 1960

No. ....

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JOHN BURRELL GARNER, *et al.*,

*Petitioners,*

—v.—

STATE OF LOUISIANA.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled case on October 5, 1960.

**Citations to Opinions Below**

The opinions below are not reported. The Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge, rendered an oral opinion which is set forth in the Statement, *infra*, page 7. The Supreme Court of Louisiana entered a brief handwritten opinion which is also set forth, *infra*, page 12.

**Jurisdiction**

The judgment of the Supreme Court of Louisiana was entered on October 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., §1257(3), petitioners claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

### **Questions Presented**

Petitioners, Negro students, sat down and sought food service at a lunch counter which served only white people in a public establishment which welcomed their trade without racial discrimination at all counters but that lunch counter; for this they were arrested and convicted under the provisions of a law proscribing conduct "in such a manner as to unreasonably disturb or alarm the public"; and there was no evidence of any disorder, disturbance of the peace, or public alarm. Under the circumstances, were petitioners deprived of rights protected by the:

1. due process clause of the Fourteenth Amendment in that they were convicted on a record barren of any evidence of guilt;
2. due process clause of the Fourteenth Amendment in that they were convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality;
3. due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted to enforce racial discrimination;
4. due process clause of the Fourteenth Amendment, as that clause incorporates First Amendment type protection of liberty of expression?

**Statutory and Constitutional Provisions Involved**

1. The Fourteenth Amendment to the Constitution of the United States.

2. The Louisiana statutory provision involved is LSA-R.S. 14:103:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

- (1) Engaging in a fistie encounter; or
- (2) Using of any unnecessarily loud, offensive, or insulting language; or
- (3) Appearing in an intoxicated condition; or
- (4) Engaging in any act in a violent and tumultuous manner by three or more persons; or
- (5) Holding of an unlawful assembly; or
- (6) Interruption of any lawful assembly of people; or
- (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both."

### Statement

This is one of three petitions<sup>1</sup> filed here this day involving cases decided on identical grounds by the Supreme Court of Louisiana on October 5, 1960. The questions presented are identical and the factual situations from which they stem are in relevant particulars almost entirely the same. In each criminal prosecution, the State of Louisiana, initially acting through Captain Robert Weiner of the Baton Rouge City Police and other police officials including, on one occasion a major of the police and on another occasion the Chief, arrested petitioners, who were students at Southern University, for violating a state statute, LSA-R.S. 14:103(7), which makes criminal "any other act" committed "in such a manner as to unreasonably disturb or alarm the public." Petitioners in each case, respectively, merely requested nonsegregated service at three different public lunch counters in stores where otherwise they were welcome as customers. No disturbances in fact occurred in any of the three cases. Petitioners in each case were tried on criminal informations which stated their race, and were convicted and sentenced to imprisonment of four months, three months of which might be suspended upon payment of fine.

On March 29, 1960, petitioners in the instant case, who were students at Southern University (RQ 9),<sup>2</sup> and who were Negroes (RT 2), were seated at the lunch counter in

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<sup>1</sup> The other two petitions seek review of the following decisions of the Supreme Court of Louisiana; *State of Louisiana v. Jannette Hoston*, Nos. 45,337 and 45,213 and *State of Louisiana v. Mary Briscoe, et al.*, Nos. 45,336 and 45,212.

<sup>2</sup> "RQ" refers to the record on the motion to quash and application for review thereof; "RT" refers to the trial record and application for review thereof.

Sitman's Drug Store, Baton Rouge, Louisiana (RT 10). One of petitioners ordered coffee (RT 11). Negroes are served nonfood articles in the drug store section of the establishment (RT 12) at the same counter (RT 13). They "are very good customers" (RT 13), but are not served at the lunch counter there (RT 12).

The manager did not call the police, and did not know who called them, but soon they arrived (RT 11). The police Captain who made the arrests received no complaint from anyone other than a police officer on his beat at the store (RT 15-16).

Captain Weiner, who made the arrests in the *Briscoe* and *Hoston* cases filed today, also made the arrests here. He had been called to the drug store by the officer on the beat (RT 15).

He told me that there were two negroes sitting at the lunch counter at Sitman's Drug Store. I told him to just stand by until we arrived at the scene. Major Bauer approached them and told them that they were violating the law by sitting there and asked them to leave. One of them mentioned something about an umbrella that he had bought and he couldn't see why he couldn't sit at the lunch counter. He told them again that they were violating the law and when they didn't make any effort to leave we placed them under arrest and brought them to police headquarters (RT 15).

The basis of the arrest was further explained:

Q. But you know of no complaint from anybody else other than the police? A. No, that's the only one that I know of (RT 15-16).

Q. And when you arrived on the scene you saw these defendants sitting at this lunch counter? A. That's right.

Q. And based upon what you call a violation of the law you arrested them, is that correct? A. That's right.

Q. What law is this you are referring to that you advised them they were violating? A. Act 103, which is disturbing the peace charge.

Q. You advised them that you were arresting them under the provisions of Act 103? A. We told them that they were violating the law under the State Act and that we requested that they leave. When they refused to leave we placed them under arrest.

Q. That's all that transpired at that time? A. Other than the fact that one of them said something about an umbrella that he had brought there.

Q. He told you he had bought an umbrella there? A. That's right.

Q. Is it a fact that they were negroes that you arrested them? A. The fact that they were violating the law.

Q. In what way were they violating the law? A. By the fact that they were sitting at a counter that was reserved for white people.

Q. So the fact was, that they were negroes that was the cause of you arresting them? A. Well, the only thing that I can say is, the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested.

Q. Do you know of any such law as that? A. They have a law here I believe that covers such a situation.

Q. You believe. Do you know positively that there is such a law? A. The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103.

Q. You are saying that this mere presence in a store that you believe is reserved by law for white people constitutes a disturbance of the peace? A. I didn't say their presence in the store. I said their presence sitting at the lunch counter.

Q. Lunch counter? You admit that? A. Yes.

Q. The mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law, is that what you are saying?

A. That's right, yes (RT 16-17).

Informations were filed against petitioners which disclosed their race (RT 2) as "(CM)," i.e., colored male.

After motions to quash and assertions of various constitutional defenses, set forth in detail, *infra*, pages 8-9, a trial was had and on the evidence set forth above petitioners were convicted (RT 19). Following the close of the testimony, the trial judge rendered an oral opinion (RT 19):

In this case, the evidence was not disputed, the evidence put on by the State, that these two accused were in this place of business on the date alleged in the bill of information, and they were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers arrived they informed these two accused that they would have to leave, and they refused to leave. Whereupon, the officers placed them under arrest for violating the law, specifically Title 14, Section 103, subsection 7. The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and



actually did, unreasonably disturb and alarm the public. I find them both guilty as charged. Do you request that I defer sentence and do you want me to sentence them now?

Motion for new trial was made and denied. Application for writs of certiorari, mandamus and prohibition was filed in the Supreme Court of Louisiana and denied (RT 33). Application for stay of execution for 60 days was granted by the Chief Justice of the Louisiana Supreme Court on October 7, 1960, which later was extended until January 6, 1961.

### **How the Federal Questions Are Presented**

The federal questions sought to be reviewed here were raised in the court of first instance (the Nineteenth Judicial District Court, Division A) on April 27, 1960, by petitioners' timely motion to quash the information (RQ 8-11). In this motion, aside from variously alleging that the information charged no offense under Louisiana's "disturbing the peace" statute, petitioners averred (RQ 9):

5. That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Sitman's Drug Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

6. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

The motion was argued, submitted and denied on April 29, 1960, to which ruling petitioners objected, reserved a formal bill of exceptions and gave written notice of their intention to apply to the State Supreme Court for writs of certiorari, mandamus and prohibition (RQ 13, 15). The bill of exceptions was signed by the trial judge on May 6 (RQ 17) and this application, which was presented to the Supreme Court of Louisiana on the same day (RQ 18-22), urged (RQ 19, 20):

3. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

4. That the refusal of your relators to move from a cafe counter seat at Sitman's Drug Store in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a

crime within the terms and meaning of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

. . . . .

6. That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

This application for writs of certiorari, mandamus and prohibition was denied on May 9 with a notation that "Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction" (RQ 28). Thereafter, petitioners applied for and were summarily denied a rehearing on May 24 (RQ 29-30, 33).

Petitioners' case came on for trial on June 2, 1960, at which time their counsel stated for the record that "he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exceptions previously taken" (RT 4).

Petitioners were found "guilty as charged" (RT 3) and, on June 5, they filed a motion for new trial which alleged, *inter alia* (RT 22):

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States, and repugnant to and in violation of Title 42, United States Code, Sections 1981 and 1983, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively.

This motion was denied (RT 4) and petitioners filed forthwith a bill of exceptions, renewing all reservations, motions and bills of exceptions previously taken (RT 6-7).

Thereafter, on July 19, 1960, petitioners applied to the Supreme Court of the State for writs of certiorari, prohibition and mandamus (RT 24-27) which incorporated by reference their previous applications for such writs (RT 24) and also urged that the verdict and sentence of the trial court "are repugnant to and in violation of . . . the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of Louisiana and of the United States" (RT 25).

The Supreme Court of Louisiana denied this application on October 5, 1960, stating (RT 33):

Writs refused.

This Court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judge on matters of law are not erroneous. See *Town of Pontchatoula v. Bates*, 173 La., 824, 138 So., 851.

### **Reasons for Granting the Writ**

#### **L**

**The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights.**

- A. The decision below affirms a criminal conviction based upon no evidence of guilt and therefore conflicts with this Court's decision in *Thompson v. City of Louisville*, 362 U. S. 199.**

The trial court reached the following conclusion on the evidence presented at trial:

The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public. I find them both guilty as charged (RT 19).

It is submitted that none of the evidence presented affords any basis for this conclusion and determination of guilt, if any conventional meaning is given to the words of the statute, some of which are incorporated into the con-

clusion of the trial court.<sup>3</sup> The Supreme Court of Louisiana apparently regarded itself as inhibited from re-examining the factual basis for the determination of guilt,<sup>4</sup> but under traditional principles this Court makes its "own independent examination of the record" where facts and constructions are determinative of federal constitutional rights. *Napue v. Illinois*, 360 U.S. 264, 271, 272.<sup>5</sup>

The record simply shows that petitioners, Negroes, quietly and peacefully took seats at a lunch counter which served only white people and requested coffee; that they were advised by the proprietor that they "couldn't" be served; and that they remained seated at the counter. There was no argument or altercation with the proprietor (or anyone else); none of the other customers in the store complained to the proprietor about petitioners' presence; the proprietor did not request that petitioners leave the seats they occupied; the proprietor did not summon the police, request police assistance, or even talk with the police on the occasion of the arrests. A police officer on his "beat" observed petitioners seated at the lunch counter and called police headquarters. A police major and police captain arrived, requested that petitioners leave, and then arrested petitioners on the ground, stated by Captain

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<sup>3</sup> In pertinent part the statute provides:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

• • • • •

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

<sup>4</sup> See opinion below, RT 33.

<sup>5</sup> It is well settled that this Court will "decide for itself facts or constructions upon which federal constitutional issues rest"; *Napue v. Illinois*, above. See *Spano v. New York*, 360 U.S. 315, 316; *Norris v. Alabama*, 294 U.S. 587; *Niemotko v. Maryland*, 340 U.S. 268, 271; and the many cases collected in *Napue*, at 360 U.S. 264, 272, note 4.

Weiner, that petitioners were violating the law "by the fact that they were sitting at a counter that was reserved for white people" (RT 16).

There was no testimony in the record that anyone was alarmed or disturbed, no testimony that any disorder or disturbance occurred, no testimony that anyone even feared or apprehended that a disorder might occur, and no testimony that any member of the public requested police assistance or made a complaint.

Thus there was absolutely nothing in the record to support the conclusion that petitioners did anything "in a manner calculated to" disturb or alarm the public, or that the public was "actually" alarmed or disturbed.

Thus this case is like *Thompson v. City of Louisville*, 362 U.S. 199, and should have been decided on the same principles applied in that case. In the *Thompson* case the petitioner had been convicted of disorderly conduct, and loitering. The evidence showed essentially that the petitioner there had been out on the dance floor of a cafe alone for about half an hour awaiting a bus (on this the loitering charge was based), and that when he was arrested for loitering he argued with the police (on which the disorderly conduct charge was based). This Court held the convictions void as having been based on no evidence and, therefore, violative of the due process clause of the Fourteenth Amendment. Here, as in *Thompson*, "there is no support for these convictions in the record . . ." (362 U.S. at 204), and, therefore, the convictions are "void as denials of due process" (*Ibid.*). There is in the instant suit, as the *Thompson* opinion reiterated, "no evidence whatever in the record to support these convictions" (*Ibid.*). [J]ust as "conviction upon a charge not made would be sheer denial of due process," so is it a violation of due process to convict and punish a man without evidence of his guilt" (*Id.* at 206).



The judgment below conflicts sharply with the law as this Court declared it in *Thompson*. A full hearing, therefore, should be granted so that this Court may consider the grave constitutional issue posed by this contradiction.

**B. Petitioners were convicted of a crime under the provisions of a state statute which as applied to convict them is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.**

The information filed in this case charges petitioners with having violated "Article 103 (Section 7) of the Louisiana Criminal Code" (R. 1). Subsection 7 of The Statute invoked (LSA R.S. §14-103) prohibits the "Commission of any other act in such a manner as to unreasonably disturb or alarm the public." As is evident from the discussion in the preceding section of this petition, no conventional understanding of the meaning of the words of the statute explains or supports the determination of guilt on the present record. Whether or not the statute has been read by the Court below to give it any esoteric meaning which is not plain from a reading of the statute, it is plain that it is unconscionably vague and indefinite.\*

It may be observed that subsection 7, the catch-all part of the law, has not been applied in this case in accordance with the maxim *ejusdem generis*, for petitioners were convicted even though they committed no acts of the same character as those specifically prohibited in the six specific

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\* The grammatical construction of subsection 7, viz., "to unreasonably disturb or alarm the public"—opens the door to further confusion and vagueness. Query: Is the act violated when the public "unreasonably" becomes disturbed or alarmed, or when an unreasonable act disturbs or alarms the public? In any event the record fails to show that anyone was disturbed or alarmed.

subsections. It is plain that petitioners did not (1) engage "in a fistic encounter", (2) use "any unnecessarily loud, offensive, or insulting language", (3) appear "in an intoxicated condition", (4) engage "in any act in a violent and tumultuous manner by three or more persons", (5) hold "an unlawful assembly", or (6) interrupt "any lawful assembly of people", but they were nevertheless adjudged guilty.

Prior decisions of the Supreme Court of Louisiana do nothing to elucidate how the diffuse command of the catch-all section 7 prohibits and makes criminal acts such as petitioners'. The case cited by the Court below, *Town of Pontchatoula v. Bates*, 173 La. 824, 138 So. 851 (1931), states that "a disturbance of the peace may be created by any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament." On the other hand, in the most recent decision of the Louisiana Supreme Court dealing with this section, *State v. Sanford*, 203 La. 961, 14 So. 2d 778 (1943), the Court held that when Jehovah's Witnesses were charged under subsection 7 with having disturbed the peace by distributing literature in the course of their activities, the conviction should be reversed where the record indicated that they were "orderly and did not tend to cause a disturbance of the peace." In that case the court expressed its view that if the statute were applied to the activities in question it might be invalid for vagueness:

"... to construe and apply the statute in the way the district judge did would seriously involve its validity under our State Constitution, because it is well settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a

crime clearly and unmistakably by statute. . . . It is our opinion that the statute is inapplicable to this case because it appears that the defendants did not commit any unlawful act or pursue an unlawful or disorderly course of conduct which would tend to disturb the peace" (14 So. 2d at 781).

Only when the statute is viewed in the light of the arresting officers' theory of the crime, namely that the Negro petitioners committed a crime merely by sitting at a lunch counter reserved for white people, does the real basis of the arrest and conviction emerge. But such a construction and application of the statute is unfair because the statute gives no warning that petitioners' mere act of sitting at a lunch counter reserved for white people and requesting food service is criminally punishable.

Subsection 7 is so broad and vague that definition of the actions which may be punished is effectively relegated to the police, and ultimately to the Courts for *ad hoc* determination after the fact in every case. There is no readily ascertainable standard of criminality or guilt.

This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As the Court held in *Lanzetta v. New Jersey*, 306 U.S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also, *United States v. L. Cohen Grocery*, 255 U.S. 81, 89; *Connally v. General Const. Co.*, 269 U.S. 385; *Raley v. Ohio*, 360 U.S. 423. The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

Moreover, the statute punished petitioners' protest against racial segregation practices and customs in the community; for this reason the vagueness is even more invidious. When freedom of expression is involved the principle that penal laws may not be vague must, if anything, be enforced even more stringently. *Cantwell v. Connecticut*, 310 U.S. 296, 308-311; *Scully v. Virginia*, 359 U.S. 344; *Watkins v. United States*, 354 U.S. 178; *Herndon v. Lowry*, 301 U.S. 242, 261-264.

As this Court stated in *Winters v. New York*, 333 U.S. 507, 520, a case where the court invalidated a state law applied to limit free expression on the grounds of vagueness: "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained". In this case the state has indiscriminately classified and punished innocent actions as criminal. The result is an arbitrary exercise of the state's power which offends due process. *Wieman v. Updegraff*, 344 U.S. 183, 191.

**C. The decision below conflicts with prior decisions of this Court which condemn racially discriminatory administration of State criminal laws.**

It is plain on the face of the record from the testimony of the State's own witnesses that petitioners were arrested merely because they were Negroes and sought food service at a lunch counter maintained for white persons. The petitioners' race was the only basis for the police officers' command that they leave the seats which they occupied at the lunch counter, and for the arrests which followed failure to follow this command. Both the arrests and convictions rest on the theory that petitioners violated the state law by their mere presence as Negroes, at the white lunch counter. The criminal accusation itself specifically identifies petitioners' race.

As long ago as *Gibson v. Mississippi*, 162 U.S. 565, a case involving a claim of discrimination in jury procedures, this Court stated the broad proposition that racial discrimination in the administration of criminal laws violates the Fourteenth Amendment. The court said at 162 U.S. 565, 591:

"The guaranties of life, liberty, and property are for all persons within the jurisdiction of the United States or of any state, without discrimination against any because of their race. *Those guaranties, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the nation and of the state, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not application to all other classes.* (Emphasis supplied.)

This Court has repeatedly struck down statutes and ordinances which provided criminal penalties to enforce racial segregation. *Buchanan v. Warley*, 245 U.S. 60; *Holmes v. City of Atlanta*, 350 U.S. 879; *Gayle v. Browder*, 352 U.S. 903, affirming 142 F. Supp. 707 (M.D. Ala. 1956); *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1958), were all cases in which criminal laws used to maintain segregation were invalidated. Cf. *Evers v. Dwyer*, 358 U.S. 202. Likewise, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court nullified a criminal prosecution under a statute which was fair on its face but was being administered to effect a discrimination against a single ethnic group.

While it may be argued by the State that in this case the racial discrimination against petitioners is beyond the reach of the Fourteenth Amendment because it originated

with the decision of a "private entrepreneur" to establish a "white-only" lunch counter in deference to local customs and traditions, this is not dispositive of the case because it is racial discrimination by agents of the State of Louisiana, i.e., the police, which affords the primary basis for these prosecutions. It was the police officers acting as law enforcement representatives of the State who commanded petitioners to leave their seats at the lunch counter because petitioners were Negroes and the counter was maintained for white people. It was the police officers who arrested petitioners for failure to obey this command. It was the public prosecutor who charged petitioners with an offense, and it was the State's judiciary that convicted and sentenced them. Thus, from the policeman's order, the conviction and punishment, the State was engaged in enforcing racial segregation with all of its law enforcement machinery.

This racial discrimination may fairly be said to be the product of state action within the reach of the Fourteenth Amendment which "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." *Civil Rights Cases*, 109 U.S. 3, 11. As stated by the Court in *Cooper v. Aaron*, 358 U.S. 1, 17:

"Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, . . . [citing cases] . . . ; or whatever the guise in which it is taken, . . . [citing cases]."

Just as judicial enforcement of racially restrictive covenants was held to constitute state action in violation



of the Fourteenth Amendment in *Shelley v. Kraemer*, 334 U.S. 1, and *Barrows v. Jackson*, 346 U.S. 249, so in this case judicial enforcement of a rule of racial segregation in privately owned lunch counters operated as business property opened up for use by the general public should likewise be condemned.

Unlike *Marsh v. Alabama*, 326 U.S. 501, and *Boynton v. Virginia*, — U.S. —, 5 L. ed. 2d 206, this is not a "trespass" prosecution involving a collision of property rights and personal rights, for it was the police officer's demand that petitioners leave their seats, based upon the officer's determination that they violated the law by their very presence in the seats, that formed the basis for conviction.<sup>7</sup> There is no evidence that the proprietor or any of his employees demanded that petitioners leave the premises. Neither did they request that the police make such a demand.

Here petitioners as welcome customers in a business establishment open to the public sought to obtain food service at a lunch counter set aside for white persons. They were prevented from pursuing their peaceful requests for service by the intervention of the police officers bent upon enforcing racial segregation.

The police officer's demand that petitioners leave their seats because of the racial segregation customs and the subsequent arrests based on this demand deprived petitioners of the equal protection of the laws. A similar arrest was said to be an illegal deprivation of civil rights by police officers in *Boman v. Birmingham Transit Co.*, 280 F. 2d 531, 533, note 1 (5th Cir. 1960), quoting from the

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<sup>7</sup> But even if the case is measured in terms of criminal trespass provisions like those in *Marsh, supra*, the language of the Court in that case is apt; see p. 24, *infra*, and cases cited at that point.



decision below *sub nom. Boman v. Morgan* (N.D. Ala. 1959, C.A. No. 9255), 4 Race Relations Law Reporter 1027, 1031 (otherwise unreported):

"A charge of 'a breach of the peace' is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law.

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"Under the undisputed evidence, plaintiffs acted in a peaceful manner at all times and were in peaceful possession of the seats which they had taken on boarding the bus. Such being the case, *the police officers were without legal right to direct where they should sit because of their color.* The seating arrangement was a matter between the Negroes and the Transit Company. It is evident that the arrests at the barn were based on the refusal of the plaintiffs to comply with the request to move since those who did move, though equally involved except as to compliance, were not arrested.

"Under the facts in this case, *the officers violated the civil rights of the plaintiffs in arresting and imprisoning them.* Ordinance 1487-F, and their 'willful' refusal to move when directed to do so, did not authorize or justify their conduct." (Emphasis supplied.)

It is submitted that the use of the criminal laws of the states to enforce racial segregation and discrimination

presents a grave challenge to the integrity of our system of criminal justice in the United States. Because, unfortunately, arrests and convictions based upon racial considerations are not uncommon,<sup>\*</sup> it is all the more important that this Court should exercise continued vigilance in protecting civil rights in such cases. For this reason it is submitted that this case presents a question of public importance which merits plenary review by this Court.

**D. The decision below conflicts with decisions of this Court securing the Fourteenth Amendment right to freedom of expression.**

Petitioners were requesting service at public lunch counters in establishments where their trade was welcome, except that they were not permitted to sit at counters reserved for white persons—and for this, and this alone, they were arrested. Their presence at these counters expressed in Baton Rouge what thousands of other Negro students have been manifesting throughout the nation—dissatisfaction with being relegated to second class status in public establishments which accept on an equal basis their trade at all counters except lunch counters; there racial segregation prevails.

As the motion to quash in each of these three cases stated, “your defendants, each, in protest of the segregation laws of the State of Louisiana, did . . . ‘sit in’ a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested . . .”.

The liberty secured by the due process clause of the Fourteenth Amendment insofar as it protects free expression is hardly limited to verbal utterances. It covers

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<sup>\*</sup> See II, *infra*.

picketing, *Thornhill v. Alabama*, 310 U.S. 83; free distribution of handbills, *Martin v. Struthers*, 319 U.S. 141; display of motion pictures, *Burstyn v. Wilson*, 343 U.S. 495; joining of associations, *N.A.A.C.P. v. Alabama*, 357 U.S. 449; the display of a flag or symbol, *Stromberg v. California*, 283 U.S. 359. What has become known as a "sit in" is a different but obviously well understood symbol, a meaningful method of communication.

These "sit ins" occurred in places entirely open to the public and to petitioners as well. That the premises were privately owned should not detract from the high constitutional position which such free expression deserves. This is hardly a case involving, for example, expression of views in a private home or other restricted area private in nature. The establishment here, as in the other two petitions presented today, were open to the public and the patronage of the public, including that of Negroes was sought.

*Marsh v. Alabama*, 326 U.S. 501, 506, rejected argument that being present upon private property *per se* divests a person of the constitutional right of free expression:

Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

In that case, therefore, this Court held unconstitutional convictions of Jehovah's Witnesses for trespass for proselytizing on private property of a company town. See also, *Republic Aviation Corp. v. National Labor Relations Board*, 324 U.S. 793, 801, note 6; *National Labor Relations Board v. Babcock and Wilcox Co.*, 351 U.S. 105, 112; *United Steelworkers v. National Labor Relations Board*, 243 F. 2d 593,

598 (D.C. Cir. 1956), *rev. on other grounds*, 357 U.S. 357; *People v. Barisi*, 193 Misc. 934, 86 N.Y.S. 2d 277, 279 (1948); *Freeman v. Retail Clerks Union*, 45 Lab. Rel. Ref. Man. 2334 (Wash. Super. Ct. 1959).

These decisions, of course, are manifestations of the fundamental view, stated in *Munn v. Illinois*, 94 U.S. 113, 126, that "when . . . one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. . . ."

Although in the case now at bar there was no evidence of anything remotely resembling breach of the peace, *Cantwell v. Connecticut*, held, in invalidating a conviction for inciting breach of the peace, "obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." 310 U.S. 296, 308. "Here," Justice Roberts wrote, "We have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." *Id.* at 308. Therefore, "... in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question," *Id.* at 311.

Indeed, in the *Cantwell* case there was evidence that defendants' acts had provoked some hostility. That is not the situation in the instant case. But even if petitioners here had stirred unrest by their demonstration, this is

precisely the type of expression that the freedom of speech guarantee of the Constitution is supposed to protect.

*Terminiello v. Chicago*, 337 U.S. 1, 4, held that:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, supra (315 U.S. pp. 571, 572, 86 L. ed. 1034, 1035, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

As Justice Holmes wrote for a unanimous Court in *Schenck v. United States*, 249 U.S. 47, 52:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent.

In the context of this record the State apparently asserts the power to prevent two evils, as it views them: (1) disturbance of the peace—but the record offers no support for an inference that any such danger was present in any degree; (2) nonsegregation at lunch counters—but the State has no power to compel segregation. See *Brown v. Board of Education*, 347 U.S. 483; *State Athletic Commis-*

*sion v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1918). Therefore, having no valid interest to preserve, the State has no power to impose criminal penalties for the expression in which petitioners here engaged.

## II.

### **The Public Importance of the Issues Presented**

A. This case presents issues posed by numerous similar demonstrations throughout the nation which have resulted in widespread desegregation and also in many similar cases now pending in state and federal courts. Petitioners need not multiply citations to demonstrate that during the past year thousands of students throughout the nation have participated in demonstrations like those for which petitioners have been convicted.

A comprehensive description of these "sit-in" protests appears in Pollitt, *Dime Store Demonstration: Events and Legal Problems of the First Sixty Days*, 1960 Duke Law Journal 315 (1960). These demonstrations have occurred in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia and elsewhere. *Pollitt, supra, passim*.

In a large number of places, this nationwide protest has prompted startling changes at lunch counters throughout the South, and service is now afforded in many establishments on a nonsegregated basis. The Attorney General of the United States has announced the end of segregation at public lunch counters in 69 cities, *New York Times*, August 11, 1960, page 14, col. 5 (late city edition), and since that announcement the number of such cities has risen above 112, *New York Times*, Oct. 18, 1960, page 47, col. 5 (late city edition).

In many instances, however, these demonstrations, as in the case at bar, have resulted in arrests and criminal prosecutions which, in their various aspects, present as a fundamental issue questions posed here, that is, may the state use its power to compel racial segregation in private establishments which are open to the public and to stifle protests against such segregation. Such cases having been presented to the Supreme Court of Appeals of Virginia,<sup>9</sup> the Supreme Court of North Carolina,<sup>10</sup> the Supreme Court of Arkansas,<sup>11</sup> the Court of Criminal Appeals of Texas,<sup>12</sup> the Court of Appeals of Alabama,<sup>13</sup> the Court of Appeals of Maryland,<sup>14</sup> several South Carolina appellate courts,<sup>15</sup> and the Georgia Court of Appeals.<sup>16</sup> Numerous other cases are pending at the trial level.

<sup>9</sup> *Raymond B. Randolph, Jr. v. Commonwealth of Va.* (No. 5233, 1960).

<sup>10</sup> *State of N. C. v. Fox and Sampson* (No. 442, Supreme Court, Fall Term 1960).

<sup>11</sup> *Chester Briggs, et al. v. State of Arkansas* (No. 4992) (consolidated with *Smith v. State of Ark.*, No. 4994, and *Lupper v. State of Ark.*, No. 4997).

<sup>12</sup> *Briscoe v. State of Texas* (Court of Crim. App., 1960, No. 32347) and related cases (decided Dec. 14, 1960; conviction reversed on ground that indictment charging in alternative invalid for vagueness).

<sup>13</sup> *Bessie Cole v. City of Montgomery* (3rd Div. Case No. 57) (together with seven other cases, Case Nos. 58-64).

<sup>14</sup> *William L. Griffin, et al. v. State of Maryland*, No. 248, September Term 1960 (two appeals in one record); see related civil action sub nom. *Griffin, et al. v. Collins, et al.*, 187 F. Supp. 149 (D.C. D Md 1960).

<sup>15</sup> *City of Charleston v. Mitchell, et al.* (Court of Gen. Sess. for Charleston County) (appeal from Recorders Ct.); *State v. Randolph, et al.* (Court of Gen. Sess. for Sumter County) (appeal from Magistrates Ct.); *City of Columbia v. Bowie, et al.* (Court of Gen. Sess. for Richland County) (appeal from Recorders Ct.).

<sup>16</sup> *M. L. King, Jr. v. State of Georgia* (two appeals: No. 38648 and No. 38718).



It is, therefore, of widespread public importance that the Court consider the issues here presented so that the lower courts and the public may be guided authoritatively with respect to the constitutional limitations on state prosecutions for engaging in this type of protest.

B. The holding below, if allowed to stand, will in effect undermine numerous decisions of this Court striking down state enforced racial discrimination. For example, the discrimination on buses interdicted by the Constitution in *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707, could be revived by convictions for disturbing the peace. In the same manner, state enforced prohibitions against members of the white and colored races participating in the same athletic contests, outlawed in *Dorsey v. State Athletic Commission*, 168 F. Supp. 149, aff'd 359 U.S. 533, could be accomplished. Indeed, segregation of schools, forbidden by *Brown v. Board of Education*, 347 U.S. 483, and innumerable cases decided since that time, especially those affecting Louisiana, e.g., *Orleans Parish School Board v. Bush*, 242 F. 2d 156 (5th Cir. 1957), cert. denied 354 U.S. 921, might also be accomplished by prosecutions for disturbing the peace even though no disturbances in fact occurred.

The holding below, if allowed to stand, would be completely subversive of the numerous decisions throughout the federal judiciary outlawing state enforced racial distinctions. Indeed, the segregation here is perhaps more invidious than that accomplished by other means for it is not only based upon a vague statute which is enforced by the police according to their personal notions of what constitutes a violation and then sanctioned by state courts but it suppresses freedom of expression as well.

### CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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IN THE  
**Supreme Court of the United States**

October Term, 1960

No. ~~618~~ 27

MARY BRISCOE, et al.,

*Petitioners,*

—v.—

STATE OF LOUISIANA.

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

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IN THE  
**Supreme Court of the United States**

October Term, 1960

No. ....

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MARY BRISCOE, *et al.*,

*Petitioners,*

—v.—

STATE OF LOUISIANA.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled case on October 5, 1960.

**Citations to Opinions Below**

The opinions below are not reported. The Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge, rendered an oral opinion which is set forth in the Statement, *infra*, page 6. The Supreme Court of Louisiana entered a brief handwritten opinion which is also set forth, *infra*, page 10.

**Jurisdiction**

The judgment of the Supreme Court of Louisiana was entered on October 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., §1257(3), petitioners claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

### **Questions Presented**

Petitioners, Negro students, sat down and sought food service at a lunch counter which served only white people in a public establishment which welcomed their trade without racial discrimination at all counters but that lunch counter; for this they were arrested and convicted under the provisions of a law proscribing conduct "in such a manner as to unreasonably disturb or alarm the public"; and there was no evidence of any disorder, disturbance of the peace, or public alarm. Under the circumstances, were petitioners deprived of rights protected by the:

1. due process clause of the Fourteenth Amendment in that they were convicted on a record barren of any evidence of guilt;
2. due process clause of the Fourteenth Amendment in that they were convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality;
3. due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted to enforce racial discrimination;
4. due process clause of the Fourteenth Amendment, as that clause incorporates First Amendment type protection of liberty of expression?

### **Statutory and Constitutional Provisions Involved**

1. The Fourteenth Amendment to the Constitution of the United States.

2. The Louisiana statutory provision involved is LSA-R.S. 14:103:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

(1) Engaging in a fistic encounter; or

(2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people;  
or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both."

### Statement

This is one of three petitions<sup>1</sup> filed here this day involving cases decided on identical grounds by the Supreme Court of Louisiana on October 5, 1960. The questions presented are identical and the factual situations from which they stem are in relevant particulars almost entirely the same. In each criminal prosecution, the State of Louisiana, initially acting through Captain Robert Weiner of the Baton Rouge City Police and other police officers including, on one occasion a major of the police and on another occasion the Chief, arrested petitioners, who were students at Southern University, for violating a state statute, LSA-R.S. 14:103(7), which makes criminal "any other act" committed "in such a manner as to unreasonably disturb or alarm the public." Petitioners in each case, respectively, merely requested nonsegregated service at three different public lunch counters in stores where otherwise they were welcome as customers. No disturbances in fact occurred in any of the three cases. Petitioners in each case were tried on criminal informations which disclosed their race and were convicted and sentenced to imprisonment of four months, three months of which might be suspended upon payment of a fine of \$100.00 and costs.

On March 29, 1960, petitioners in the instant case, students at Southern University (RT 2),<sup>2</sup> presented themselves as patrons at a lunch counter in the Baton Rouge

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<sup>1</sup> The other two petitions seek review of the following decisions of the Supreme Court of Louisiana: *State of Louisiana v. John B. Garner, et al.*, Nos. 45,214 and 45,338; *State of Louisiana v. Jannette Houston*, Nos. 45,337 and 45,213.

<sup>2</sup> "RT" refers to the trial record and application for review thereof. "RQ" refers to the record on the motion to quash and application for review thereof.

Greyhound Bus Station (RT 10). The waitress told them that as Negroes "they would have to go to the other side to be served . . . (RT 11). [W]e are supposed to refuse the service of anyone that comes in there that is not supposed to be on that side" (RT 11) and "[t]he colored people are supposed to be on the other side" (RT 11). The only posted sign announced, "Refuse service to anyone" (RT 12).

Petitioners "just kept sitting there and they said they wanted something. . . ." (RT 11). They did not do anything else (RT 14): "The only reason [she] asked them to leave is because they were Negroes" (RT 12). Another "place [was] reserved for colored people in this same building" (RT 14). "[S]o we called the police," the waitress testified, "and told them to come get them" (RT 11).

Police Captain Robert Weiner, who made the arrests in the *Garner* and *Hoston* cases filed here this day, and Major Bauer, Inspector of the Police Department, proceeded to the bus station with other officers and saw petitioners sitting at the lunch counter reserved for white people (RT 15-16).

He asked them to move but they remained seated, saying nothing (RT 16). When placed under arrest, however, "They came along peacefully" (RT 17).

The Captain stated that petitioners were arrested because "according to the law, in my opinion, they were disturbing the peace" (RT 17). He explained, saying, "the fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community" (RT 18). They were "disturbing the peace," he said, "by the mere presence of their being there" (RT 20).

The informations filed against petitioners disclosed their race by the notation "(CF)" or "(CM)," (RT 1, 2), i.e., colored female or colored male.

After motions to quash and assertions of various defenses under the Fourteenth Amendment to the Constitution of the United States, set forth in detail *in/ra*, page 7, a trial was had and on the evidence set forth above petitioners were convicted. Following the close of the testimony, the trial judge rendered an oral opinion (RT 20-21):

All of the accused stand up. The State has introduced testimony of two witnesses in this case which is not disputed at all by the defense. In fact there is no evidence by the defense, and under this Article 103, Section 7, the one that they are charged under, it is the decision of the Court that they are guilty as charged for the reason that from the evidence in this case their actions in sitting on stools in this place of business when they were requested to leave and they refused to leave; the officers were called, the officers requested them to leave and they still refused to leave, their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public. The Court is convinced beyond a reasonable doubt from the testimony in the case that these accused are guilty as charged.

Motion for new trial was made and denied. Application for writs of certiorari, mandamus and prohibition was filed in the Supreme Court of Louisiana and denied (RT 37). Application for stay of execution for 60 days was granted by the Chief Justice of the Louisiana Supreme Court on October 7, 1960, which later was extended until January 6, 1961.



### **How the Federal Questions Are Presented**

The federal questions sought to be reviewed here were raised in the court of first instance (the Nineteenth Judicial District Court, Division A) on April 27, 1960, by petitioners' timely motion to quash the information (RQ 8-11). In this motion, aside from variously alleging that the information charged no offense under Louisiana's "disturbing the peace" statute, petitioners averred (RQ 9):

5. That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Greyhound Restaurant constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

6. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

The motion was argued, submitted and denied on April 29, 1960, to which ruling petitioners objected, reserved a formal bill of exceptions and gave written notice of their intention to apply to the State Supreme Court for writs of certiorari, mandamus and prohibition (RQ 13, 15). The bill of exceptions was signed by the trial judge on May 6 (RQ 17) and this application, which was presented to the Supreme Court of Louisiana on the same day (RQ 18-22) urged (RQ 19, 20):

3. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

4. That the refusal of your relators to move from a cafe counter seat at Greyhound Restaurant in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meaning of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

. . . . .

6. That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari,

Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

This application for writs of certiorari, mandamus and prohibition was denied on May 9 with a notation that "Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction" (RQ 28). Thereafter, petitioners applied for and were summarily denied a rehearing on May 24 (RQ 29-30, 33).

Petitioners' case came on for trial on June 2, 1960, at which time their counsel stated for the record that "they wished to reserve any and all rights they may have under the writs of certiorari, mandamus and prohibition would like to renew all reservations and motions previously that have been denied" (RT 3).

Petitioners were found guilty as charged (RT 3) and, on June 5, they filed a motion for new trial which alleged, *inter alia* (RT 24):

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article I, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions

of the Constitution of the State of Louisiana and of the United States of America, respectively.

This motion was denied (RT 4) and petitioners filed forthwith a bill of exceptions, renewing all reservations, motions and bills of exceptions previously taken (RT 6-7).

Thereafter, on July 20, 1960, petitioners applied to the Supreme Court of the State for writs of certiorari, prohibition and mandamus (RT 26-29) which incorporated by reference their previous applications for such writs (RT 26) and also urged that the verdict and sentence of the trial court are "repugnant to and in violation of . . . the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of the State of Louisiana and of the United States" (RT 27).

The Supreme Court of Louisiana denied this application on October 5, 1960, stating (RT 36):

Writs refused.

This Court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judges on matters of law are not erroneous. See *Town of Pontchatoula v. Bates*, 173 La., 824, 138 So. 851.

## Reasons for Granting the Writ

### I.

#### The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights.

- A. The decision below affirms a criminal conviction based upon no evidence of guilt and therefore conflicts with this Court's decision in *Thompson v. City of Louisville*, 362 U.S. 199.**

The trial court reached the following conclusion on the evidence presented at trial, which is detailed in the Statement of Facts, *supra*:

... it is the decision of the Court that they are guilty as charged for the reason that from the evidence in this case their actions in sitting on stools in this place of business when they were requested to leave and they refused to leave; the officers were called, the officers requested them to leave and they still refused to leave, their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public. The Court is convinced beyond a reasonable doubt from the testimony in the case that these accused are guilty as charged (RT 21).

It is submitted that none of the evidence presented affords any basis for this conclusion and determination of guilt, if any conventional meaning is given to the words of the statute.<sup>3</sup> The Supreme Court of Louisiana apparently regarded

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<sup>3</sup> In pertinent part the statute provides:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

• • • • •

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

itself as inhibited from re-examining the factual basis for the determination of guilt,<sup>4</sup> but under traditional principles this Court makes its "own independent examination of the record" where facts and constructions are determinative of federal constitutional rights. *Napue v. Illinois*, 360 U.S. 264, 271, 272.<sup>5</sup>

The record simply shows that petitioners, Negroes, quietly and peacefully took seats at a lunch counter which served only white people and requested food service; that they were advised by the waitress that Negroes were supposed to be at another counter and asked to leave; and that they remained seated at the counter. There was no argument or altercation with the waitress (or anyone else); none of the other customers in the store complained about petitioners' presence.

A police major and police captain arrived, requested that petitioners leave, and then arrested petitioners on the ground, stated by Captain Weiner, that petitioners were violating the law and disturbing the peace because "the fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community" (RT 18).

There was no testimony in the record that anyone was alarmed or disturbed, no testimony that any disorder or disturbance actually occurred, and no testimony that anyone even feared or apprehended that a disorder might occur. Thus there was absolutely nothing in the record to

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<sup>4</sup> See opinion below, RT 33.

<sup>5</sup> It is well settled that this Court will "decide for itself facts or constructions upon which federal constitutional issues rest"; *Napue v. Illinois*, above. See *Spano v. New York*, 360 U.S. 315, 316; *Norris v. Alabama*, 294 U.S. 587; *Niemotko v. Maryland*, 340 U.S. 268, 271; and the many cases collected in *Napue*, at 360 U.S. 264, 272, note 4.



support the conclusion that petitioners did anything "in a manner calculated to" disturb or alarm the public, or that the public was "actually" alarmed or disturbed, and the trial court's opinion said only that their acts "*would* unreasonably disturb or alarm the public" (emphasis supplied).

Thus this case is like *Thompson v. City of Louisville*, 362 U.S. 199, and should have been decided on the same principles applied in that case. In the *Thompson* case the petitioner had been convicted of disorderly conduct and loitering. The evidence showed essentially that the petitioner had been out on the dance floor of a cafe alone for about half an hour awaiting a bus (on this the loitering charge was based), and that when he was arrested for loitering he argued with the police (on which the disorderly conduct charge was based). This Court held the convictions void as having been based on no evidence and, therefore, violative of the due process clause of the Fourteenth Amendment. Here, as in *Thompson*, "there is no support for these convictions in the record . . ." (362 U.S. at 204), and, therefore, the convictions are "void as denials of due process" (*Ibid.*). There is in the instant suit, as the *Thompson* opinion reiterated, "no evidence whatever in the record to support these convictions" (*Ibid.*). [J]ust as "conviction upon a charge not made would be sheer denial of due process," so is it a violation of due process to convict and punish a man without evidence of his guilt (*Id.* at 206).

The judgment below conflicts sharply with the law as this Court declared it in *Thompson*. A full hearing, therefore, should be granted so that this Court may consider the grave constitutional issue posed by this contradiction.



**B. Petitioners were convicted of a crime under the provisions of a state statute which as applied to convict them is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.**

The information filed in this case charges petitioners with having violated "Article 103 (Section 7) of the Louisiana Criminal Code" (R. 1). Subsection 7 of The Statute invoked (LSA R.S. §14-103) prohibits the "Commission of any other act in such a manner as to unreasonably disturb or alarm the public." As is evident from the discussion in the preceding section of this petition, no conventional understanding of the meaning of the words of the statute explains or supports the determination of guilt on the present record. Whether or not the statute has been read by the Court below to give it any esoteric meaning which is not plain from a reading of the statute, it is plain that it is unconscionably vague and indefinite.\*

It may be observed that subsection 7, the catch-all part of the law, has not been applied in this case in accordance with the maxim *ejusdem generis*, for petitioners were convicted even though they committed no acts of the same character as those specifically prohibited in the six specific subsections. It is plain that petitioners did not (1) engage "in a fistic encounter", (2) use "any unnecessarily loud, offensive, or insulting language", (3) appear "in an intoxicated condition", (4) engage "in any act in a violent and tumultuous manner by three or more persons", (5) hold "an

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\* The grammatical construction of subsection 7, viz., "to unreasonably disturb or alarm the public"—opens the door to further confusion and vagueness. Query: Is the act violated when the public "unreasonably" becomes disturbed or alarmed, or when an unreasonable act disturbs or alarms the public? In any event the record fails to show that anyone was disturbed or alarmed.

unlawful assembly", or (6) interrupt "any lawful assembly of people", but they were nevertheless adjudged guilty.

Prior decisions of the Supreme Court of Louisiana do nothing to elucidate how the diffuse command of the catch-all section 7 prohibits and makes criminal acts such as petitioners'. The case cited by the Court below, *Town of Pontchatoula v. Bates*, 173 La. 824, 138 So. 851 (1931), states that "a disturbance of the peace may be created by any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament." On the other hand, in the most recent decision of the Louisiana Supreme Court dealing with this section, *State v. Sanford*, 203 La. 961, 14 So. 2d 778 (1943), the Court held that when Jehovah's Witnesses were charged under subsection 7 with having disturbed the peace by distributing literature in the course of their activities, the conviction should be reversed where the record indicated that they were "orderly and did not tend to cause a disturbance of the peace." In that case the court expressed its view that if the statute were applied to the activities in question it might be invalid for vagueness:

"... to construe and apply the statute in the way the district judge did would seriously involve its validity under our State Constitution, because it is well settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute. . . . It is our opinion that the statute is inapplicable to this case because it appears that the defendants did not commit any unlawful act or pursue an unlawful or disorderly course of conduct which would tend to disturb the peace" (14 So. 2d at 781).

Only when the statute is viewed in the light of the arresting officers' theory of the crime, namely that the Negro petitioners committed a crime merely by sitting at a lunch counter reserved for white people, does the real basis of the arrest and conviction emerge. But such a construction and application of the statute is unfair because the statute gives no warning that petitioners' mere act of sitting at a lunch counter reserved for white people and requesting food service is criminally punishable.

Subsection 7 is so broad and vague that definition of the actions which may be punished is effectively relegated to the police, and ultimately to the Courts for *ad hoc* determination after the fact in every case. There is no readily ascertainable standard of criminality or guilt.

This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As the Court held in *Lanzetta v. New Jersey*, 306 U.S. 451, 453, "no one may required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also, *United States v. L. Cohen Grocery*, 255 U.S. 81, 89; *Connally v. General Const. Co.*, 269 U.S. 385; *Raley v. Ohio*, 360 U.S. 423. The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

Moreover, the statute punished petitioners' protest against racial segregation practices and customs in the community; for this reason the vagueness is even more invidious. When freedom of expression is involved the principle that penal laws may not be vague must, if anything, be enforced even more stringently. *Cantwell v.*

*Connecticut*, 310 U.S. 296, 308-311; *Scull v. Virginia*, 359 U.S. 344; *Watkins v. United States*, 354 U.S. 178; *Herndon v. Lowry*, 301 U.S. 242, 261-264.

As this Court stated in *Winters v. New York*, 333 U.S. 507, 520, a case where the court invalidated a state law applied to limit free expression on the grounds of vagueness: "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained". In this case the state has indiscriminately classified and punished innocent actions as criminal. The result is an arbitrary exercise of the state's power which offends due process. *Wieman v. Updegraff*, 344 U.S. 183, 191.

**C. The decision below conflicts with prior decisions of this Court which condemn racially discriminatory administration of State criminal laws.**

It is plain on the face of the record from the testimony of the State's own witnesses that petitioners were arrested merely because they were Negroes and sought food service at a lunch counter maintained for white persons. The petitioners' race was the only basis for the police officers' command that they leave the seats which they occupied at the lunch counter, and for the arrests which followed failure to follow this command. Both the arrests and convictions rest on the theory that petitioners violated the state law by their mere presence as Negroes, at the white lunch counter. The criminal accusation itself specifically identifies petitioners' race.

As long ago as *Gibson v. Mississippi*, 162 U.S. 565, a case involving a claim of discrimination in jury procedures, this Court stated the broad proposition that racial discrimination in the administration of criminal laws violates the Fourteenth Amendment. The court said at 162 U.S. 565, 591:

**"The guaranties of life, liberty, and property are for all persons within the jurisdiction of the United States or of any state, without discrimination against any because of their race. Those guaranties, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the nation and of the state, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not application to all other classes. (Emphasis supplied.)**

This Court has repeatedly struck down statutes and ordinances which provided criminal penalties to enforce racial segregation. *Buchanan v. Warley*, 245 U.S. 60; *Holmes v. City of Atlanta*, 350 U.S. 879; *Gayle v. Browder*, 352 U.S. 903, affirming 142 F. Supp. 707 (M.D. Ala. 1956); *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1958), were all cases in which criminal laws used to maintain segregation were invalidated. Cf. *Evers v. Dwyer*, 358 U.S. 202. Likewise, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court nullified a criminal prosecution under a statute which was fair on its face but was being administered to effect a discrimination against a single ethnic group.

While it may be argued by the State that in this case the racial discrimination against petitioners is beyond the reach of the Fourteenth Amendment because it originated with the decision of a "private entrepreneur" to establish a "white-only" lunch counter in deference to local customs and traditions, this is not dispositive of the case because it is racial discrimination by agents of the State of Louisiana, i.e., the police, which affords the primary basis for these prosecutions. It was the police officers acting as law enforcement representatives of the State who com-

manded petitioners to leave their seats at the lunch counter because petitioners were Negroes and the counter was maintained for white people. It was the police officers who arrested petitioners for failure to obey this command. It was the public prosecutor who charged petitioners with an offense, and it was the State's judiciary that convicted and sentenced them. Thus, from the policeman's order, the conviction and punishment, the State was engaged in enforcing racial segregation with all of its law enforcement machinery.

This racial discrimination may fairly be said to be the product of state action within the reach of the Fourteenth Amendment which "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." *Civil Rights Cases*, 109 U.S. 3, 11. As stated by the Court in *Cooper v. Aaron*, 358 U.S. 1, 17:

"Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, . . . [citing cases] . . . ; or whatever the guise in which it is taken, . . . [citing cases]."

Just as judicial enforcement of racially restrictive covenants was held to constitute state action in violation of the Fourteenth Amendment in *Shelley v. Kraemer*, 334 U.S. 1, and *Barrows v. Jackson*, 346 U.S. 249, so in this case judicial enforcement of a rule of racial segregation in privately owned lunch counters operated as business property opened up for use by the general public should likewise be condemned.



Unlike *Marsh v. Alabama*, 326 U.S. 501, and *Boynton v. Virginia*, — U.S. —, 5 L. ed. 2d 206, this is not a "trespass" prosecution involving a collision of property rights and personal rights, for it was the police officer's demand that petitioners leave their seats, based upon the officer's determination that they violated the law by their very presence in the seats, that formed the basis for conviction.'

Here petitioners, as welcome customers in a business establishment open to the public, sought to obtain food service at a lunch counter set aside for white persons. They were prevented from pursuing their peaceful requests for service by the intervention of the police officers bent upon enforcing racial segregation.

The police officer's demand that petitioners leave their seats because of the racial segregation customs and the subsequent arrests based on this demand deprived petitioners of the equal protection of the laws. A similar arrest was said to be an illegal deprivation of civil rights by police officers in *Boman v. Birmingham Transit Co.*, 280 F. 2d 531, 533, note 1 (5th Cir. 1960), quoting from the decision below *sub nom. Boman v. Morgan* (N.D. Ala. 1959, C.A. No. 9255), 4 Race Relations Law Reporter 1027, 1031 (otherwise unreported):

"A charge of 'a breach of the peace' is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the

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' But even if the case is measured in terms of criminal trespass provisions like those in *Marsh, supra*, the language of the Court in that case is apt. See p. 23, *infra*, and cases cited at that point.



peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law.

. . . . .

"Under the undisputed evidence, plaintiffs acted in a peaceful manner at all times and were in peaceful possession of the seats which they had taken on boarding the bus. Such being the case, *the police officers were without legal right to direct where they should sit because of their color.* The seating arrangement was a matter between the Negroes and the Transit Company. It is evident that the arrests at the barn were based on the refusal of the plaintiffs to comply with the request to move since those who did move, though equally involved except as to compliance, were not arrested.

"Under the facts in this case, *the officers violated the civil rights of the plaintiffs in arresting and imprisoning them.* Ordinance 1487-F, and their 'willful' refusal to move when directed to do so, did not authorize or justify their conduct." (Emphasis supplied.)

It is submitted that the use of the criminal laws of the states to enforce racial segregation and discrimination presents a grave challenge to the integrity of our system of criminal justice in the United States. Because, unfortunately, arrests and convictions based upon racial considerations are not uncommon,\* it is all the more important that this Court should exercise continued vigilance in protecting civil rights in such cases. For this reason it is submitted that this case presents a question of public importance which merits plenary review by this Court.

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\* See II, *infra*.

**D. The decision below conflicts with decisions of this Court securing the Fourteenth Amendment right to freedom of expression.**

Petitioners were requesting service at public lunch counters in establishments where their trade was welcome, except that they were not permitted to sit at counters reserved for white persons—and for this, and this alone, they were arrested. Their presence at these counters expressed in Baton Rouge what thousands of other Negro students have been manifesting throughout the nation—dissatisfaction with being relegated to second class status in public establishments which accept on an equal basis their trade at all counters except lunch counters; there racial segregation prevails.

As the motion to quash in each of these three cases stated, “your defendants, each, in protest of the segregation laws of the State of Louisiana, did . . . ‘sit in’ a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested . . .”.

The liberty secured by the due process clause of the Fourteenth Amendment insofar as it protects free expression is hardly limited to verbal utterances. It covers picketing, *Thornhill v. Alabama*, 310 U.S. 88; free distribution of handbills, *Martin v. Struthers*, 319 U.S. 141; display of motion pictures, *Burstyn v. Wilson*, 343 U.S. 495; joining of associations, *N.A.A.C.P. v. Alabama*, 357 U.S. 449; the display of a flag or symbol, *Stromberg v. California*, 283 U.S. 359. What has become known as a “sit in” is a different but obviously well understood symbol, a meaningful method of communication.

These “sit ins” occurred in places entirely open to the public and to petitioners as well. That the premises were privately owned should not detract from the high constitu-

tional position which such free expression deserves. This is hardly a case involving, for example, expression of views in a private home or other restricted area private in nature. The establishment here, as in the other two petitions presented today, were open to the public and the patronage of the public, including that of Negroes, was sought.

*Marsh v. Alabama*, 326 U.S. 501, 506, rejected argument that being present upon private property *per se* divests a person of the constitutional right of free expression:

Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

In that case, therefore, this Court held unconstitutional convictions of Jehovah's Witnesses for trespass for proselytizing on private property of a company town. See also, *Republic Aviation Corp. v. National Labor Relations Board*, 324 U.S. 793, 801, note 6; *National Labor Relations Board v. Babcock and Wilcox Co.*, 351 U.S. 105, 112; *United Steelworkers v. National Labor Relations Board*, 243 F. 2d 593, 598 (D.C. Cir. 1956), *rev. on other grounds*, 357 U.S. 357; *People v. Barisi*, 193 Misc. 934, 86 N.Y.S. 2d 277, 279 (1948); *Freeman v. Retail Clerks Union*, 45 Lab. Rel. Ref. Man. 2334 (Wash. Super. Ct. 1959).

These decisions, of course, are manifestations of the fundamental view, stated in *Munn v. Illinois*, 94 U.S. 113, 126, that "when . . . one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. . . ."

Although in the case now at bar there was no evidence of anything remotely resembling breach of the peace, *Cantwell v. Connecticut* held in invalidating a conviction for inciting breach of the peace, "obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." 310 U.S. 296, 308. "Here," Justice Roberts wrote, "we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." *Id.* at 308. Therefore, "... in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question." *Id.* at 311.

Indeed, in the *Cantwell* case there was evidence that defendants' acts had provoked some hostility. That is not the situation in the instant case. But even if petitioners here had stirred unrest by their demonstration, this is precisely the type of expression that the freedom of speech guarantee of the Constitution is supposed to protect.

*Terminiello v. Chicago*, 337 U.S. 1, 4, held that:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound un-

settling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, supra (315 U.S. pp. 571, 572, 86 L. ed 1034, 1035, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

As Justice Holmes wrote for a unanimous Court in *Schenck v. United States*, 249 U.S. 47, 52:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent.

In the context of this record the State apparently asserts the power to prevent two evils, as it views them: (1) disturbance of the peace—but the record offers no support for an inference that any such danger was present in any degree; (2) nonsegregation at lunch counters—but the State has no power to compel segregation. See *Brown v. Board of Education*, 347 U.S. 483; *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1918). Therefore, having no valid interest to preserve, the State has no power to impose criminal penalties for the expression in which petitioners here engaged.

## II.

**The Public Importance of the Issues Presented**

A. This case presents issues posed by numerous similar demonstrations throughout the nation which have resulted in widespread desegregation and also in many similar cases now pending in state and federal courts. Petitioners need not multiply citations to demonstrate that during the past year thousands of students throughout the nation have participated in demonstrations like those for which petitioners have been convicted.

A comprehensive description of these "sit-in" protests appears in Pollitt, *Dime Store Demonstration: Events and Legal Problems of the First Sixty Days*, 1960 Duke Law Journal 315 (1960). These demonstrations have occurred in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia and elsewhere. *Pollitt, supra, passim*.

In a large number of places, this nationwide protest has prompted startling changes at lunch counters throughout the South, and service is now afforded in many establishments on a nonsegregated basis. The Attorney General of the United States has announced the end of segregation at public lunch counters in 69 cities, *New York Times*, August 11, 1960, page 14, col. 5 (late city edition), and since that announcement the number of such cities has risen above 112, *New York Times*, Oct. 18, 1960, page 47, col. 5 (late city edition).

In many instances, however, these demonstrations, as in the case at bar, have resulted in arrests and criminal prosecutions which, in their various aspects, present as a fundamental issue questions posed here, that is, may the state use its power to compel racial segregation in private estab-

lishments which are open to the public and to stifle protests against such segregation. Such cases having been presented to the Supreme Court of Appeals of Virginia,<sup>9</sup> the Supreme Court of North Carolina,<sup>10</sup> the Supreme Court of Arkansas,<sup>11</sup> the Court of Criminal Appeals of Texas,<sup>12</sup> the Court of Appeals of Alabama,<sup>13</sup> the Court of Appeals of Maryland,<sup>14</sup> several South Carolina appellate courts,<sup>15</sup> and the Georgia Court of Appeals.<sup>16</sup> Numerous other cases are pending at the trial level.

It is, therefore, of widespread public importance that the Court consider the issues here presented so that the lower courts and the public may be guided authoritatively with

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<sup>9</sup> *Raymond B. Randolph, Jr. v. Commonwealth of Va.* (No. 5233, 1960).

<sup>10</sup> *State of N. C. v. Fox and Sampson* (No. 442, Supreme Court, Fall Term 1960).

<sup>11</sup> *Chester Briggs, et al. v. State of Arkansas* (No. 4992) (consolidated with *Smith v. State of Ark.*, No. 4994, and *Lupper v. State of Ark.*, No. 4997).

<sup>12</sup> *Briscoe v. State of Texas* (Court of Crim. App., 1960, No. 32347) and related cases (decided Dec. 14, 1960; conviction reversed on ground that indictment charging in alternative invalid for vagueness).

<sup>13</sup> *Bessie Cole v. City of Montgomery* (3rd Div. Case No. 57) (together with seven other cases, Case Nos. 58-64).

<sup>14</sup> *William L. Griffin, et al. v. State of Maryland*, No. 248, September Term 1960 (two appeals in one record); see related civil action sub nom. *Griffin, et al. v. Collins, et al.*, 187 F. Supp. 149 (D.C. D.Md. 1960).

<sup>15</sup> *City of Charleston v. Mitchell, et al.* (Court of Gen. Sess. for Charleston County) (appeal from Recorders Ct.); *State v. Randolph, et al.* (Court of Gen. Sess. for Sumter County) (appeal from Magistrates Ct.); *City of Columbia v. Bouie, et al.* (Court of Gen. Sess. for Richland County) (appeal from Recorders Ct.).

<sup>16</sup> *M. L. King, Jr. v. State of Georgia* (two appeals: No. 38648 and No. 38718).



respect to the constitutional limitations on state prosecutions for engaging in this type of protest.

B. The holding below, if allowed to stand, will in effect undermine numerous decisions of this Court striking down state enforced racial discrimination. For example, the discrimination on buses interdicted by the Constitution in *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707, could be revived by convictions for disturbing the peace. In the same manner, state enforced prohibitions against members of the white and colored races participating in the same athletic contests, outlawed in *Dorsey v. State Athletic Commission*, 168 F. Supp. 149, aff'd 359 U.S. 533, could be accomplished. Indeed, segregation of schools, forbidden by *Brown v. Board of Education*, 347 U.S. 483, and innumerable cases decided since that time, especially those affecting Louisiana, e.g., *Orleans Parish School Board v. Bush*, 242 F. 2d 156 (5th Cir. 1957), cert. denied 354 U.S. 921, might also be accomplished by prosecutions for disturbing the peace even though no disturbances in fact occurred.

The holding below, if allowed to stand, would be completely subversive of the numerous decisions throughout the federal judiciary outlawing state enforced racial distinctions. Indeed, the segregation here is perhaps more invidious than that accomplished by other means for it is not only based upon a vague statute which is enforced by the police according to their personal notions of what constitutes a violation and then sanctioned by state courts but it suppresses freedom of expression as well.

## CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**

October Term, 1960

No. ~~619~~ 28

JANNETTE HOSTON, *et al.*,

*Petitioners,*

—v.—

STATE OF LOUISIANA.

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

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IN THE  
**Supreme Court of the United States**

October Term, 1960

No. ....

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JANNETTE HOSTON, *et al.*,

*Petitioners,*

—v.—

STATE OF LOUISIANA

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled case on October 5, 1960.

**Citations to Opinions Below**

The opinions below are not reported. The Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge, rendered an oral opinion which is set forth in the Statement, *infra*, page 6. The Supreme Court of Louisiana entered a brief handwritten opinion which is also set forth, *infra*, pages 10-11.

**Jurisdiction**

The judgment of the Supreme Court of Louisiana was entered on October 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., §1257(3), petitioners claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

### **Questions Presented**

Petitioners, Negro students, sat down and sought food service at a lunch counter which served only white people in a public establishment which welcomed their trade without racial discrimination at all counters but that lunch counter; for this they were arrested and convicted under the provisions of a law proscribing conduct "in such a manner as to unreasonably disturb or alarm the public"; and there was no evidence of any disorder, disturbance of the peace, or public alarm. Under the circumstances, were petitioners deprived of rights protected by the:

1. due process clause of the Fourteenth Amendment in that they were convicted on a record barren of any evidence of guilt;

2. due process clause of the Fourteenth Amendment in that they were convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality;

3. due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted to enforce racial discrimination;

4. due process clause of the Fourteenth Amendment, as that clause incorporates First Amendment type protection of liberty of expression?

### **Statutory and Constitutional Provisions Involved**

1. The Fourteenth Amendment to the Constitution of the United States.

2. The Louisiana statutory provision involved is LSA-R.S. 14:103:

“Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

- (1) Engaging in a fistie encounter; or
- (2) Using of any unnecessarily loud, offensive, or insulting language; or
- (3) Appearing in an intoxicated condition; or
- (4) Engaging in any act in a violent and tumultuous manner by three or more persons; or
- (5) Holding of an unlawful assembly; or
- (6) Interruption of any lawful assembly of people; or
- (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.”

### Statement

This is one of three petitions<sup>1</sup> filed here this day involving cases decided on identical grounds by the Supreme Court of Louisiana on October 5, 1960. The questions presented are identical and the factual situations from which they stem are in relevant particulars almost entirely the same. In each criminal prosecution, the State of Louisiana, initially acting through Captail Robert Weiner of the Baton Rouge City Police and other police officials including, on one occasion a major of the police and on another occasion the Chief, arrested petitioners, who were students at Southern University, for violating a state statute, LSA-R.S. 14:103(7), which makes criminal "any other act" committed "in such a manner as to unreasonably disturb or alarm the public." Petitioners in each case, respectively, merely requested nonsegregated service at three different public lunch counters in stores where otherwise they were welcome as customers. No disturbances in fact occurred in any of the three cases. Petitioners in each case were tried on criminal informations which disclosed their race and were convicted and sentenced to imprisonment of four months, three month of which might be suspended upon payment of a fine of \$100.00 and costs.

On March 28, 1960 petitioners in the instant case, Negro students at Southern University (RT 1, 2),<sup>2</sup> were present as customers in Kress's store in Baton Rouge. It is "cus-

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<sup>1</sup> The other two petitions seek review of the following decisions of the Supreme Court of Louisiana: *State of Louisiana v. John B. Garner, et al.*, Nos. 45,214 and 45,338; *State of Louisiana v. Mary Briscoe, et al.*, Nos. 45,336 and 45,212.

<sup>2</sup> "RT" refers to the trial record and application for review thereof. "RQ" refers to the record on the motion to quash and application for review thereof.

tomary that white and colored [persons] all come into Kress[']s Store and make other purchases at the same counters at the same time" (RT 13), but Kress in Baton Rouge maintains separate lunch counter facilities for Negroes and whites (RT 12). "That's the custom of [the] store" (RT 17). There were no signs indicating it (RT 14), but the store's rule requiring racial segregation at the lunch counter was said to have been communicated to petitioners by the waitresses and stewards (RT 14). The manager stated that petitioners should have known of it by customs and by noticing "that the colored people were being served at the counter across the store" (RT 14).

Petitioners did not "do anything other than sit at this cafe counter seat that [the manager] would consider would be disturbing the peace" (RT 15).

In this case, as in the *Briscoe* and *Garner* cases filed this day, petitioners were arrested by Captain Weiner of the Baton Rouge police (RT 18). On this occasion he was accompanied by the Chief of Police who ordered the arrests (RT 18).

Captain Weiner was asked (RT 19):

"Did these defendants do anything other than sit at these particular cafe counter seats that you would consider disturbing the peace or in violation of any law?"

He replied (RT 20):

"Well, other than the fact that one of them mentioned something about the ice water nothing else was said."

. . . . .

"Q. How were they disturbing the peace? A. By sitting there.

"Q. By sitting there? A. That's right.

. . . . .

"Q. And that is because they were members of the negro race? A. That was because that place was reserved for white people."

The informations filed against petitioners disclosed their race by the notation "(CF)" or "(CM)," (RT 1, 2), i.e., colored female or colored male.

After motions to quash and assertions of various constitutional defenses under the Fourteenth Amendment to the Constitution of the United States, set forth in detail *infra*, pages 7-9, a trial was had and on the evidence set forth above petitioners were convicted. Following the close of the testimony, the trial judge rendered an oral opinion (RT 22-23):

"The evidence in this case put on by the State is not disputed and it is to this effect, that these accused were in Kress' store in Baton Rouge on the date alleged in the bill of information and that they took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the officers talked to these accused, or some of them, and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their

sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt."

Motion for new trial was made and denied. Application for writs of certiorari, mandamus and prohibition was filed in the Supreme Court of Louisiana and denied (RT 37). Application for stay of execution for 60 days was granted by the Chief Justice of the Louisiana Supreme Court on October 7, 1960, which was later extended until January 6, 1961.

### **How the Federal Questions Are Presented**

The federal questions sought to be reviewed here were raised in the court of first instance (the Nineteenth Judicial District Court, Division A) on April 27, 1960, by petitioners' timely motion to quash the information (RQ 7-10). In this motion, aside from variously alleging that the information charged no offense under Louisiana's "disturbing the peace" statute, petitioners averred (RQ 8):

5. That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Kress' Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th)



Amendment to the Constitution of the United States of America.

6. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

The motion was argued, submitted and denied on April 29, 1960, to which ruling petitioners objected, reserved a formal bill of exceptions and gave written notice of their intention to apply to the State Supreme Court for writs of certiorari, mandamus and prohibition (RQ 12, 14). The bill of exceptions was signed by the trial judge on May 6 (RQ 16) and this application, which was presented to the Supreme Court of Louisiana on the same day (RQ 17-21), urged (RQ 18, 19):

3. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

4. That the refusal of your relators to move from a cafe counter seat at Kress' Store in obedience of an order by an agent thereof is not a crime em-

braced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meaning of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

• • • • •

6. That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

This application for writs of certiorari, mandamus and prohibition was denied on May 9 with a notation that "Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction" (RQ 27). Thereafter, petitioners applied for and were summarily denied a rehearing on May 24 (RQ 28-29, 32).

Petitioners' case came on for trial on June 2, 1960, at which time their counsel stated for the record that "he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exceptions previously taken" (RT 4).

Petitioners were found "guilty as charged" (RT 3) and, on June 5, they filed a motion for new trial which alleged, *inter alia* (RT 29):

That the said verdict is contrary to the law and evidence in that, it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively.

This motion was denied (RT 4) and petitioners filed forthwith a bill of exceptions, renewing all reservations, motions and bills of exceptions previously taken (RT 6-7).

Thereafter, on July 19, 1960, petitioners applied to the Supreme Court of the State for writs of certiorari, prohibition and mandamus (RT 24-27) which incorporated by reference their previous applications for such writs (RT 24) and also urged that the verdict and sentence of the trial court "are repugnant to and in violation of . . . the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of Louisiana and of the United States" (RT 25).

The Supreme Court of Louisiana denied this application on October 5, 1960, stating (RT 37):

Writs refused.

This Court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judges on matters of law are not erroneous. See *Town of Pontchatoula v. Bates*, 173 La., 824, 138 So., 851.

## Reasons for Granting the Writ

### I.

**The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights.**

- A. The decision below affirms a criminal conviction based upon no evidence of guilt and, therefore, conflicts with this Court's decision in *Thompson v. City of Louisville*, 362 U. S. 199.**

The trial court reached the following conclusion on the evidence presented at trial, which is detailed in the Statement of Facts, *supra*:

"That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt" (RT 22-23).

It is submitted that none of the evidence presented affords any basis for this conclusion and determination of

guilt, if any conventional meaning is given to the words of the statute.<sup>3</sup>

It will be noted that there is no finding that petitioners' actions did in fact disturb or alarm the public, but only that they "foreseeably *could* alarm and disturb the public." The Supreme Court of Louisiana apparently regarded itself as inhibited from re-examining the factual basis for the determination of guilt,<sup>4</sup> but under traditional principles this Court makes its "own independent examination of the record" where facts and constructions are determinative of federal constitutional rights. *Napue v. Illinois*, 360 U.S. 264, 271, 272.<sup>5</sup>

The record simply shows that petitioner, Negroes, peacefully took seats at a lunch counter which served only white people and requested service; that the store manager (who was seated at the counter eating) advised the waitress to offer petitioners service at a counter across the aisle which served Negroes; that they remained seated at the counter; that the manager finished his meal and then telephoned the police because he "feared that some disturbance might occur . . . because it isn't customary for the two races to sit together and eat together" (RT 11). There was no

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<sup>3</sup> In pertinent part the statute provides:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

• • • • •

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

<sup>4</sup> See opinion below, RT 33.

<sup>5</sup> It is well settled that this Court will "decide for itself facts or constructions upon which federal constitutional issues rest"; *Napue v. Illinois*, above. See *Spano v. New York*, 360 U.S. 315, 316; *Norris v. Alabama*, 294 U.S. 587; *Niemotko v. Maryland*, 340 U.S. 268, 271; and the many cases collected in *Napue*, at 360 U.S. 264, 272, note 4.

argument or altercation; the manager insisted in his testimony that petitioners were not "requested" to move to the other counter (RT 11), and also that "As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store" (RT 15). This uncontradicted testimony that petitioners were not ordered to leave by any employee of the store is clearly at variance with the criminal accusation (information) which alleged that petitioners "refused to move from a cafe counter seat at Kress' store at North Third Street and Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress Store" (RT 1). The police chief, along with police Captain Wiener, arrived in the store and then proceeded to the counter where respondents were seated, ordered them to leave, and ordered them placed under arrest when they did not do so (RT 18). Captain Wiener testified that petitioners did nothing else that he regarded as disturbing the peace except "sitting there" at the white counter (RT 19-20).

There is no evidence that any customer in the store complained about or objected to petitioners' presence at the white lunch counter; no testimony that the disturbance which the manager "feared . . . might occur" actually ever did occur or even that there was any imminent danger of a disturbance.

Thus this case is like *Thompson v. City of Louisville*, 362 U.S. 199, and should have been decided on the same principles applied in that case. In the *Thompson* case the petitioner had been convicted of disorderly conduct and loitering. The evidence showed essentially that the petitioner had been out on the dance floor of a cafe alone for about half an hour awaiting a bus (on this the loitering charge was based), and that when he was arrested for loitering he argued with the police (on which the disorderly

conduct charge was based). This Court held the convictions void as having been based on no evidence and, therefore, violative of the due process clause of the Fourteenth Amendment. Here, as in *Thompson*, "there is no support for these convictions in the record . . ." (362 U.S. at 204), and, therefore, the convictions are "void as denials of due process" (*Ibid.*). There is in the instant suit, as the *Thompson* opinion reiterated, "no evidence whatever in the record to support these convictions" (*Ibid.*). [J]ust as "conviction upon a charge not made would be sheer denial of due process," so is it a violation of due process to convict and punish a man without evidence of his guilt" (*Id.* at 206).

The judgment below conflicts sharply with the law as this Court declared it in *Thompson*. A full hearing, therefore, should be granted so that this Court may consider the grave constitutional issue posed by this contradiction.

**B. Petitioners were convicted of a crime under the provisions of a state statute which as applied to convict them is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.**

The information filed in this case charges petitioners with having violated "Article 103 (Section 7) of the Louisiana Criminal Code" (R. 1). Subsection 7 of The Statute invoked (LSA R.S. §14-103) prohibits the "Commission of any other act in such a manner as to unreasonably disturb or alarm the public." As is evident from the discussion in the preceding section of this petition, no conventional understanding of the meaning of the words of the statute explains or supports the determination of guilt on the present record. Whether or not the statute has been read by the Court below to give it any esoteric meaning



which is not plain from a reading of the statute, it is plain that it is unconscionably vague and indefinite.\*

It may be observed that subsection 7, the catch-all part of the law, has not been applied in this case in accordance with the maxim *ejusdem generis*, for petitioners were convicted even though they committed no acts of the same character as those specifically prohibited in the six specific subsections. It is plain that petitioners did not (1) engage "in a fistie encounter", (2) use "any unnecessarily loud, offensive, or insulting language", (3) appear "in an intoxicated condition", (4) engage "in any act in a violent and tumultuous manner by three or more persons", (5) hold "an unlawful assembly", or (6) interrupt "any lawful assembly of people", but they were nevertheless adjudged guilty.

Prior decisions of the Supreme Court of Louisiana do nothing to elucidate how the diffuse command of the catch-all section 7 prohibits and makes criminal acts such as petitioners'. The case cited by the Court below, *Town of Pontchatoula v. Bates*, 173 La. 824, 138 So. 851 (1931), states that "a disturbance of the peace may be created by any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament." On the other hand, in the most recent decision of the Louisiana Supreme Court dealing with this section, *State v. Sanford*, 203 La. 961, 14 So. 2d 778 (1943), the Court held that when

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\* The grammatical construction of subsection 7, viz., "to unreasonably disturb or alarm the public"—opens the door to further confusion and vagueness. Query: Is the act violated when the public "unreasonably" becomes disturbed or alarmed, or when an unreasonable act disturbs or alarms the public? In any event the record fails to show that anyone was disturbed or alarmed.

Jehovah's Witnesses were charged under subsection 7 with having disturbed the peace by distributing literature in the course of their activities, the conviction should be reversed where the record indicated that they were "orderly and did not tend to cause a disturbance of the peace." In that case the court expressed its view that if the statute were applied to the activities in question it might be invalid for vagueness:

"... to construe and apply the statute in the way the district judge did would seriously involve its validity under our State Constitution, because it is well settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute. . . . It is our opinion that the statute is inapplicable to this case because it appears that the defendants did not commit any unlawful act or pursue an unlawful or disorderly course of conduct which would tend to disturb the peace" (14 So. 2d at 781).

Only when the statute is viewed in the light of the arresting officers' theory of the crime, namely that the Negro petitioners committed a crime merely by sitting at a lunch counter reserved for white people, does the real basis of the arrest and conviction emerge. But such a construction and application of the statute is unfair because the statute gives no warning that petitioners' mere act of sitting at a lunch counter reserved for white people and requesting food service is criminally punishable.

Subsection 7 is so broad and vague that definition of the actions which may be punished is effectively relegated to the police, and ultimately to the Courts for *ad hoc* determination after the fact in every case. There is no readily ascertainable standard of criminality or guilt.

This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As the Court held in *Lanzetta v. New Jersey*, 306 U.S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also, *United States v. L. Cohen Grocery*, 255 U.S. 81, 89; *Connally v. General Const. Co.*, 269 U.S. 385; *Raley v. Ohio*, 360 U.S. 423. The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

Moreover, the statute punished petitioners' protest against racial segregation practices and customs in the community; for this reason the vagueness is even more invidious. When freedom of expression is involved the principle that penal laws may not be vague must, if anything, be enforced even more stringently. *Cantwell v. Connecticut*, 310 U.S. 296, 308-311; *Scully v. Virginia*, 359 U.S. 344; *Watkins v. United States*, 354 U.S. 178; *Herndon v. Lowry*, 301 U.S. 242, 261-264.

As this Court stated in *Winters v. New York*, 333 U.S. 507, 520, a case where the court invalidated a state law applied to limit free expression on the grounds of vagueness: "Where a statute is so vague as to make a criminal an innocent act, a conviction under it cannot be sustained". In this case the state has indiscriminately classified and punished innocent actions as criminal. The result is an arbitrary exercise of the state's power which offends due process. *Wieman v. Updegraff*, 344 U.S. 183, 191.

**C. The decision below conflicts with prior decisions of this Court which condemn racially discriminatory administration of State criminal laws.**

It is plain on the face of the record from the testimony of the State's own witnesses that petitioners were arrested merely because they were Negroes and sought food service at a lunch counter maintained for white persons. The petitioners' race was the only basis for the police officers' command that they leave the seats which they occupied at the lunch counter, and for the arrests which followed failure to follow this command. Both the arrests and convictions rest on the theory that petitioners violated the state law by their mere presence as Negroes, at the white lunch counter. The criminal accusation itself specifically identifies petitioners' race.

As long ago as *Gibson v. Mississippi*, 162 U.S. 565, a case involving a claim of discrimination in jury procedures, this Court stated the broad proposition that racial discrimination in the administration of criminal laws violates the Fourteenth Amendment. The court said at 162 U.S. 565, 591:

*"The guaranties of life, liberty, and property are for all persons within the jurisdiction of the United States or of any state, without discrimination against any because of their race. Those guaranties, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the nation and of the state, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not application to all other classes. (Emphasis supplied.)"*

This Court has repeatedly struck down statutes and ordinances which provided criminal penalties to enforce racial segregation. *Buchanan v. Warley*, 245 U.S. 60; *Holmes v. City of Atlanta*, 350 U.S. 879; *Gayle v. Browder*, 352 U.S. 903, affirming 142 F. Supp. 707 (M.D. Ala. 1956); *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1958), were all cases in which criminal laws used to maintain segregation were invalidated. Cf. *Evers v. Dwyer*, 358 U.S. 202. Likewise, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court nullified a criminal prosecution under a statute which was fair on its face but was being administered to effect a discrimination against a single ethnic group.

While it may be argued by the State that in this case the racial discrimination against petitioners is beyond the reach of the Fourteenth Amendment because it originated with the decision of a "private entrepreneur" to establish a "white-only" lunch counter in deference to local customs and traditions, this is not dispositive of the case because it is racial discrimination by agents of the State of Louisiana, i.e., the police, which affords the primary basis for these prosecutions. It was the police officers acting as law enforcement representatives of the State who commanded petitioners to leave their seats at the lunch counter because petitioners were Negroes and the counter was maintained for white people. It was the police officers who arrested petitioners for failure to obey this command. It was the public prosecutor who charged petitioners with an offense, and it was the State's judiciary that convicted and sentenced them. Thus from the policeman's order, the conviction and punishment, the State was engaged in enforcing racial segregation with all of its law enforcement machinery.

This racial discrimination may fairly be said to be the product of state action within the reach of the Fourteenth

Amendment which "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." *Civil Rights Cases*, 109 U.S. 3, 11. As stated by the Court in *Cooper v. Aaron*, 358 U.S. 1, 17:

"Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, . . . [citing cases] . . . ; or whatever the guise in which it is taken, . . . [citing cases]."

Just as judicial enforcement of racially restrictive covenants was held to constitute state action in violation of the Fourteenth Amendment in *Shelley v. Kraemer*, 334 U.S. 1, and *Barrows v. Jackson*, 346 U.S. 249, so in this case judicial enforcement of a rule of racial segregation in privately owned lunch counters operated as business property opened up for use by the general public should likewise be condemned.

Unlike *Marsh v. Alabama*, 326 U.S. 501, and *Boynton v. Virginia*, — U.S. —, 5 L. ed. 2d 206, this is not a "trespass" prosecution involving a collision of property rights and personal rights, for it was the police officer's demand that petitioners leave their seats, based upon the officer's determination that they violated the law by their very presence in the seats, that formed the basis for conviction.<sup>1</sup> There is no evidence that the proprietor or any

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<sup>1</sup> But even if the case is measured in terms of criminal trespass provisions like those in *Marsh, supra*, the language of the Court in that case is apt. See p. 24, *infra*, and cases cited at that point.

of his employees demanded that petitioners leave the premises. Neither did they request that the police make such a demand.

Here petitioners, as welcome customers in a business establishment open to the public, sought to obtain food service at a lunch counter set aside for white persons. They were prevented from pursuing their peaceful requests for service by the intervention of the police officers bent upon enforcing racial segregation.

The police officer's demand that petitioners leave their seats because of the racial segregation customs and the subsequent arrests based on this demand deprived petitioners of the equal protection of the laws. A similar arrest was said to be an illegal deprivation of civil rights by police officers in *Boman v. Birmingham Transit Co.*, 280 F. 2d 531, 533, note 1 (5th Cir. 1960), quoting from the decision below *sub nom. Boman v. Morgan* (N.D. Ala. 1959, C.A. No. 9255), 4 Race Relations Law Reporter 1027, 1031 (otherwise unreported):

"A charge of 'a breach of the peace' is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law.

• • • • •

"Under the undisputed evidence, plaintiffs acted in a peaceful manner at all times and were in peaceful possession of the seats which they had taken on boarding the bus. Such being the case, *the police*



*officers were without legal right to direct where they should sit because of their color. The seating arrangement was a matter between the Negroes and the Transit Company. It is evident that the arrests at the barn were based on the refusal of the plaintiffs to comply with the request to move since those who did move, though equally involved except as to compliance, were not arrested.*

*"Under the facts in this case, the officers violated the civil rights of the plaintiffs in arresting and imprisoning them. Ordinance 1487-F, and their 'willful' refusal to move when directed to do so, did not authorize or justify their conduct." (Emphasis supplied.)*

It is submitted that the use of the criminal laws of the states to enforce racial segregation and discrimination presents a grave challenge to the integrity of our system of criminal justice in the United States. Because, unfortunately, arrests and convictions based upon racial considerations are not uncommon,<sup>\*</sup> it is all the more important that this Court should exercise continued vigilance in protecting civil rights in such cases. For this reason it is submitted that this case presents a question of public importance which merits plenary review by this Court.

**D. The decision below conflicts with decisions of this Court securing the Fourteenth Amendment right to freedom of expression.**

Petitioners were requesting service at public lunch counters in establishments where their trade was welcome, except that they were not permitted to sit at counters reserved for white persons—and for this, and this alone,

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<sup>\*</sup> See II, *infra*.

they were arrested. Their presence at these counters expressed in Baton Rouge what thousands of other Negro students have been manifesting throughout the nation—dissatisfaction with being relegated to second class status in public establishments which accept on an equal basis their trade at all counters except lunch counters; there racial segregation prevails.

As the motion to quash in each of these three cases stated, “your defendants, each, in protest of the segregation laws of the State of Louisiana, did . . . ‘sit in’ cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested...”.

The liberty secured by the due process clause of the Fourteenth Amendment insofar as it protects free expression is hardly limited to verbal utterances. It covers picketing, *Thornhill v. Alabama*, 310 U.S. 88; free distribution of handbills, *Martin v. Struthers*, 319 U.S. 141; display of motion pictures, *Burstyn v. Wilson*, 343 U.S. 495; joining of associations, *N.A.A.C.P. v. Alabama*, 357 U.S. 449; the display of a flag or symbol, *Stromberg v. California*, 283 U.S. 359. What has become known at a “sit in” is a different but obviously well understood symbol, a meaningful method of communication.

These “sit ins” occurred in places entirely open to the public and to petitioners as well. That the premises were privately owned should not detract from the high constitutional position which such free expression deserves. This is hardly a case involving, for example, expression of views in a private home or other restricted area private in nature. The establishment here, as in the other two petitions presented today, were open to the public and the patronage of the public, including that of Negroes was sought.

*Marsh v. Alabama*, 326 U.S. 501, 506, rejected argument that being present upon private property *per se* divests a person of the constitutional right of free expression:

Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

In that case, therefore, this Court held unconstitutional convictions of Jehovah's Witnesses for trespass for proselytizing on private property of a company town. See also, *Republic Aviation Corp. v. National Labor Relations Board*, 324 U.S. 793, 801, note 6; *National Labor Relations Board v. Babcock and Wilcox Co.*, 351 U.S. 105, 112; *United Steelworkers v. National Labor Relations Board*, 243 F. 2d 593, 598 (D.C. Cir. 1956), *rev. on other grounds*, 357 U.S. 357; *People v. Barisi*, 193 Misc. 934, 86 N.Y.S. 2d 277, 279 (1948); *Freeman v. Retail Clerks Union*, 45 Lab. Rel. Ref. Man. 2334 (Wash. Super. Ct. 1959).

These decisions, of course, are manifestations of the fundamental view, stated in *Munn v. Illinois*, 94 U.S. 113, 126, that "when . . . one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. . . ."

Although in the case now at bar there was no evidence of anything remotely resembling breach of the peace, *Cantwell v. Connecticut* held in invalidating a conviction for inciting breach of the peace, "obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." 310 U.S. 296, 308. "Here," Justice Roberts

wrote, "we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." *Id.* at 308. Therefore, "... in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question," *Id.* at 311.

Indeed, in the *Cantwell* case there was evidence that defendants' acts had provoked some hostility. That is not the situation in the instant case. But even if petitioners here had stirred unrest by their demonstration, this is precisely the type of expression that the freedom of speech guarantee of the Constitution is supposed to protect.

*Terminiello v. Chicago*, 337 U.S. 1, 4, held that:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, *supra* (315 U.S. pp. 571, 572, 86 L. ed. 1034, 1035, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

As Justice Holmes wrote for a unanimous Court in *Schenck v. United States*, 249 U.S. 47, 52:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent.

In the context of this record the State apparently asserts the power to prevent two evils, as it views them: (1) disturbance of the peace—but the record offers no support for an inference that any such danger was present in any degree; (2) nonsegregation at lunch counters—but the State has no power to compel segregation. See *Brown v. Board of Education*, 347 U.S. 483; *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 165 F. Supp. 149 (E.D. La. 1918). Therefore, having no valid interest to preserve, the State has no power to impose criminal penalties for the expression in which petitioners here engaged.

## II.

### **The Public Importance of the Issues Presented**

A. This case presents issues posed by numerous similar demonstrations throughout the nation which have resulted in widespread desegregation and also in many similar cases now pending in state and federal courts. Petitioners need not multiply citations to demonstrate that during the past year thousands of students throughout the nation have participated in demonstrations like those for which petitioners have been convicted.

A comprehensive description of these "sit-in" protests appears in Pollitt, *Dime Store Demonstration: Events and Legal Problems of the First Sixty Days*, 1960 Duke Law Journal 315 (1960). These demonstrations have occurred in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia and elsewhere. *Pollitt, supra, passim.*

In a large number of places, this nationwide protest has prompted startling changes at lunch counters throughout the South, and service is now afforded in many establishments on a nonsegregated basis. The Attorney General of the United States has announced the end of segregation at public lunch counters in 69 cities, *New York Times*, August 11, 1960, page 14, col. 5 (late city edition), and since that announcement the number of such cities has risen above 112, *New York Times*, Oct. 18, 1960, page 47, col. 5 (late city edition).

In many instances, however, these demonstrations, as in the case at bar, have resulted in arrests and criminal prosecutions which, in their various aspects, present as a fundamental issue questions posed here, that is, may the state use its power to compel racial segregation in private estab-

lishments which are open to the public and to stifle protests against such segregation. Such cases having been presented to the Supreme Court of Appeals of Virginia,<sup>9</sup> the Supreme Court of North Carolina,<sup>10</sup> the Supreme Court of Arkansas,<sup>11</sup> the Court of Criminal Appeals of Texas,<sup>12</sup> the Court of Appeals of Alabama,<sup>13</sup> the Court of Appeals of Maryland,<sup>14</sup> several South Carolina appellate courts,<sup>15</sup> and the Georgia Court of Appeals.<sup>16</sup> Numerous other cases are pending at the trial level.

It is, therefore, of widespread public importance that the Court consider the issues here presented so that the lower courts and the public may be guided authoritatively with

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<sup>9</sup> *Raymond B. Randolph, Jr. v. Commonwealth of Va.* (No. 5233, 1960).

<sup>10</sup> *State of N. C. v. Fox and Sampson* (No. 442, Supreme Court, Fall Term 1960).

<sup>11</sup> *Chester Briggs, et al. v. State of Arkansas* (No. 4992) (consolidated with *Smith v. State of Ark.*, No. 4994, and *Lupper v. State of Ark.*, No. 4997).

<sup>12</sup> *Briscoe v. State of Texas* (Court of Crim. App., 1960, No. 32347) and related cases (decided Dec. 14, 1960; conviction reversed on ground that indictment charging in alternative invalid for vagueness).

<sup>13</sup> *Bessie Cole v. City of Montgomery* (3rd Div. Case No. 57) (together with seven other cases, Case Nos. 58-64).

<sup>14</sup> *William L. Griffin, et al. v. State of Maryland*, No. 248, September Term 1960 (two appeals in one record); see related civil action sub nom. *Griffin, et al. v. Collins, et al.*, 187 F. Supp. 149 (D.C. D.Md. 1960).

<sup>15</sup> *City of Charleston v. Mitchell, et al.* (Court of Gen. Sess. for Charleston County) (appeal from Recorders Ct.); *State v. Randolph, et al.* (Court of Gen. Sess. for Sumter County) (appeal from Magistrates Ct.); *City of Columbia v. Bowie, et al.* (Court of Gen. Sess. for Richland County) (appeal from Recorders Ct.).

<sup>16</sup> *M. L. King, Jr. v. State of Georgia* (two appeals: No. 38648 and No. 38718).



respect to the constitutional limitations on state prosecutions for engaging in this type of protest.

B. The holding below, if allowed to stand, will in effect undermine numerous decisions of this Court striking down state enforced racial discrimination. For example, the discrimination on buses interdicted by the Constitution in *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707, could be revived by convictions for disturbing the peace. In the same manner, state enforced prohibitions against members of the white and colored races participating in the same athletic contests, outlawed in *Dorsey v. State Athletic Commission*, 168 F. Supp. 149, aff'd 359 U.S. 533, could be accomplished. Indeed, segregation of schools, forbidden by *Brown v. Board of Education*, 347 U.S. 483, and innumerable cases decided since that time, especially those affecting Louisiana, e.g., *Orleans Parish School Board v. Bush*, 242 F. 2d 156 (5th Cir. 1957), cert. denied 354 U.S. 921, might also be accomplished by prosecutions for disturbing the peace even though no disturbances in fact occurred.

The holding below, if allowed to stand, would be completely subversive of the numerous decisions throughout the federal judiciary outlawing state enforced racial distinctions. Indeed, the segregation here is perhaps more invidious than that accomplished by other means for it is not only based upon a vague statute which is enforced by the police according to their personal notions of what constitutes a violation and then sanctioned by state courts but it suppresses freedom of expression as well.

## **CONCLUSION**

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1960

No. ~~617~~ 26

JOHN BURRELL GARNER, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. ~~618~~ 27

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. ~~619~~ 28

JANNETTE HOSTON, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

**Brief In Opposition To  
Petition For Writ Of Certiorari To The  
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**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1960**

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**No. 617**

**JOHN BURRELL GARNER, ET AL., PETITIONERS**

**v.**

**STATE OF LOUISIANA, RESPONDENT**

---

**No. 618**

**MARY BRISCOE, ET AL., PETITIONERS**

**v.**

**STATE OF LOUISIANA, RESPONDENT**

---

**No. 619**

**JANNETTE HOSTON, ET AL., PETITIONERS**

**v.**

**STATE OF LOUISIANA, RESPONDENT**

---

**Brief In Opposition To  
Petition For Writ Of Certiorari To The  
Supreme Court Of Louisiana**

---

**OPPOSITION TO GRANTING WRITS OF  
CERTIORARI TO THE SUPREME  
COURT OF LOUISIANA**

The Federal Questions presented in each of the above three (3) entitled and numbered causes are identical as will be seen by reference to page 2 of each of the petitions for writs of certiorari. Also, as will be seen by reference to the three petitions for writs of certiorari filed by petitioners, the arguments made in support of each petition are the same. Further-

more, the facts in each case are substantially the same with only minor variations.

Therefore, in accordance with the Revised Rules of this Honorable Court, respondent shall file one brief in opposition to the petition for writs of certiorari in all three cases.

The first and primary portion of the brief in opposition will deal specifically with case No. 619, *Janette Hoston, et al, v. State of Louisiana*. The arguments given, and authorities cited, in support of respondents opposition in this case are hereby adopted, in toto, in support of the other two (2) cases. At the end of the main body of the brief in opposition to the petition in the *Hoston* case, we submit brief additional arguments in each of the other two (2) cases.

### QUESTIONS PRESENTED

Petitioners, grown Negro men and women, residents of the City of Baton Rouge and Parish of East Baton Rouge, State of Louisiana, or at least temporarily residing therein while attending Southern University, went into Kress' Department Store and sat down at a lunch counter at which they knew, or should have known, they were not wanted by the owner and/or manager of said store; after being informed that they would be served at another counter within the store, petitioners continued to stay at the first counter, thereby refusing to go to the counter to which they were directed; thereafter, after the man-

ager of the store had called the local law enforcement officers, and after said officers had requested them to leave the counter, they again refused to leave; for this they were arrested and subsequently convicted under the provisions of a valid state law proscribing the commission of an act "in such a manner as to unreasonably disturb or alarm the public"; there being evidence that they knew, or should have known, that their acts in refusing to go to the counter and area of the store as directed by the manager and their refusal to leave the store as requested by the local law enforcement officers would result in a disturbance and could foreseeably result in disorder and public alarm. Under the circumstances, were petitioners deprived of rights protected by the:

1. Due process clause of the Fourteenth Amendment in that they were convicted on a record containing evidence that their acts in refusing to recognize the right of others could foreseeably result in a disturbance, the use of physical force, and probable grave disorder and public alarm;
2. Due process clause of the Fourteenth Amendment in that they were convicted under a penal provision which any reasonable man would know proscribed the act which they committed, that is, deliberately participating in a demonstration on private property, in opposition to the owner's rights, against the owner's wishes, and refusing to leave when requested to do so, thereby requiring the use

of physical force by the owner to protect his rights.

3. Due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted under a valid statute of the State of Louisiana which was adopted for the purpose of preventing breaches of the peace and for the purpose of providing that all citizens of the State of Louisiana could continue their normal course of business and activities, as they have a right to do, without being unreasonably disturbed or alarmed; and without abandoning their own rights because of the deliberate acts of the defendants.
4. Due process clause of the Fourteenth Amendment, as that clause incorporates First Amendment type protection of liberty of expression, but when neither the Fourteenth Amendment nor the First Amendment guarantees the right of freedom of expression upon premises belonging to another and upon premises in which petitioners had not been invited to express themselves, and on premises in which petitioners had been specifically requested to leave.

### **STATEMENT OF THE CASE**

The statement of the case contained in petitioners applications for writs of certiorari although accurate in part, is sufficiently inaccurate that a separate statement of the case is hereafter set forth. This statement of the case will apply primarily to case No.



619, *Jannette Hoston, et al, v. State of Louisiana*. Any variation in the factual situation of the other two (2) cases will be set forth separately at the end of this brief when brief additional argument will be presented as to the other two (2) cases.

In the instant case, the law enforcement officials of the City of Baton Rouge acted pursuant to their duty and responsibility to preserve peace and order in the community and to prevent the commission of acts which could foreseeably result in unreasonably disturbing or alarming the general public. The police officers acted only after being called by the manager of a local department store, Kress's store, and after being informed that certain persons in the store were conducting themselves in a manner likely to result in a disturbance and because he, (the manager), "feared that some disturbance might occur" (RT 13) in that these persons had refused to remove themselves from a particular area of the store as requested by the manager or employees. The officers, acting in accordance with their duty and responsibility to the community, requested these persons peaceably to leave. Again they refused to leave and were thereafter arrested and charged with violating the statute in question.

On March 28, 1960, petitioners in the instant case entered the premises known as Kress' Store in Baton Rouge, Louisiana. They then proceeded to sit down at a lunch counter within said store at which they knew, or should have known, they were not



wanted. They went there for the stated purpose of protesting segregation in a manner in which they knew, or should have known, was likely to cause a disturbance and unreasonably disturb or alarm the public. The motion to quash filed by petitioners in the District Court specifically states in paragraph six (6) thereof:

"That while the arrests and charges were for disturbing the peace, there was not a disturbance *except for the activity in which defendants engaged to protest segregation, . . . .*" (emphasis supplied by the writer)

and, in paragraph seven (7) thereof:

" . . . that your defendants, *each, in protest of the segregation laws of the State of Louisiana, did on the 28th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the white race, . . . .*" (emphasis supplied by the writer) (RQ 7-10)

The petitioners, after seating themselves at the counter reserved for white persons by the management, which petitioners knew, or should have known, was the custom of that store, refused to leave said counter when directed to do so by the manager or employees. All of the petitioners are either residents of Baton Rouge or have resided in that city for some length of time while attending Southern University. They knew, or should have known, as did all other citizens of Baton Rouge, that the owners and/or operators of that private facility maintained separate

lunch counters for members of the white and Negro race.

Since petitioners, by remaining at said counter after having been told that they would be served elsewhere, refused to leave said counter as directed, the manager called the police. The manager testified that he called the police because he "feared that some disturbance might occur" (RT 13). The police upon arriving, and in the performance of their duty and responsibility to prevent disturbances and protect the rights of all citizens, including the owners and operators of Kress' Store, quietly requested the petitioners to observe the right of the manager and owner and leave the counter. It was only after the petitioners refused to comply with this lawful request that they were arrested and charged with a violation of state law (RT 20 and 21).

Thereafter, in due, orderly and constitutional procedure, and after petitioners were given every opportunity to file all motions and to present whatever testimony they desired, the trial Judge rendered an oral opinion which is contained at pages 22 and 23 of the record of the trial, and which is quoted below with emphasis supplied by the writer:

"The evidence in this case put on by the State is *not disputed* and it is to the effect, that these accused were in Kress' Store in Baton Rouge on the date alleged in the Bill of Information, and that they took seats at the lunch counter which by custom had been reserved for white people

only. *They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the officers talked to the accused, or some of them, and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes Title 14, Section 103, Article 7, in that the act in itself, their sitting and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the statute that I have just mentioned. I accordingly find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt."*

## **REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI**

For purposes of clarity and logical order, our brief will discuss each point argued by petitioners application in the order in which they appear in said application commencing with page 11 thereof.

### **1.**

**THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISIONS OF THIS COURT**

## ON IMPORTANT ISSUES AFFECTING FEDERAL CONSTITUTIONAL RIGHTS.

### A.

The decision below affirms a criminal conviction based upon acts committed in carrying out an unwanted demonstration on private property and a continuation of such demonstration after having been asked to cease and desist by the owner of said property and by local law enforcement agents performing their duty and responsibility to prevent breaches of the peace.

The trial Judge, being the best judge of the witnesses, evidence, and circumstances in the trial court, found that the acts of petitioners, based on evidence presented and surrounding circumstances, were committed in such a manner as to foreseeably alarm and disturb the public and result in a breach of the peace. His decision does not, therefore, conflict with this courts decision in *Thompson v. City of Louisville*, 362 US 199.

That the decision in the case of *Thompson v. City of Louisville* is not applicable to the instant case, is clear when the facts and laws involved in the two cases are compared. The ordinance involved in the *Louisville* case provides in part as follows:

"It shall be unlawful for any person . . . , without visible means of support, or who cannot give a satisfactory account of himself, . . . to sleep, lie, loaf or trespass in or about any prem-

ises, building, or other structure in the City of Louisville, without first having obtained the consent of the owner or controller of said premises, structure, or building; . . . . ”

The defendant obviously “had visible means of support” in that he was “a long time resident of the Louisville area”; he bought and paid for food and drink; he had a home in Louisville; he “had money with him”; “that he owned two unimproved lots of land”; that “in addition to work he had done for others, he had regularly worked one day or more a week for the same family for thirty (30) years”.

The defendant did “give a satisfactory account of himself” as required by the ordinance in that he had purchased food and drink in an establishment open for that purpose; he testified that he was waiting for a bus and had with him “a bus schedule showing that a bus to his home would stop within half a block of the cafe at about 7:30”; and the cafe manager testified that the defendant was a frequent patron of the cafe. He did not “sleep, lie or loaf” about the premises. He did not “trespass” as the manager testified “that he did not, at any time during petitioners stay in the cafe, object to any thing petitioner was doing” and that the defendant was “welcome there”. And as the court said, “surely this is implied consent, which the city admitted in all arguments satisfies the ordinance”.

With respect to the disorderly charge in the *Louisville* case, the ordinance there provided “whoever

shall be found guilty of disorderly conduct in the City of Louisville shall be fined . . . . " As the court pointed out, this ordinance gives no definition whatsoever of what would constitute "disorderly conduct" nor does it give any guide that a reasonable man could use to determine what course of conduct would constitute "disorderly". Furthermore, the only evidence of disorderly conduct was the statement by the police officer that defendant was very "argumentative". In the instant case, the petitioners were not charged with disorderly conduct, they were charged with committing an act in a manner which could foreseeably disturb or alarm the public.

Now, let us examine the true facts in the instant case. During late 1959 and the early part of 1960, Negro men and women throughout many cities and states in the South, took part in the so called "sit-in" demonstrations at lunch counters in various stores. On many occasions, these "sit-ins" in other cities resulted in violence, grave disorder, and pitched battles in the street between members of the Negro and white races. In many instances, these demonstrations resulted in arrests of both Negro and white persons on charges of "disturbing the peace" and "disorderly conduct". These happenings, and the resulting violence, were reported in many issues of the Morning Advocate and State Times, the only morning and afternoon newspaper in Baton Rouge. These occurrences were also reported in the weekly "Newsleader" a newspaper published for, and distributed to, the



Negro citizens of Baton Rouge. The petitioners herein had complete access to these newspapers as did all other citizens of our community. Consequently, it can be assumed by this court that the petitioners knew of these demonstrations and knew of the violence and disorder which had resulted from same in other cities. It can also be assumed by this court that they must have known that it was foreseeable that violence and disorder would result from their participating in such a demonstration on private property in Baton Rouge, Louisiana, against the wishes and established policy of the owners.

Furthermore, the petitioners herein were either long time residents of Baton Rouge, or at least, residents of some length of time while attending Southern University. Therefore, this court can assume that they knew, just as every other person in Baton Rouge knows, that Kress' Department Store is a privately owned store and that the premises on which it is situated are privately owned premises. Petitioners must also have known, as does every other citizen of the Baton Rouge community, that the private owner and proprietor of Kress' Department Store maintained a policy of separate eating facilities for members of the Negro and white races. Knowing this, the petitioners must also have known, and this court can assume they did know, that they not only were not invited, but were not welcome, to sit down at the lunch counter reserved for members of the white race. This long and publicly known policy of Kress' Department



Store in Baton Rouge, in itself, is sufficient for the court to infer an "implied objection" just as it inferred an "implied consent" in the Louisville case.

Yet, the petitioners herein, grown and presumably reasonable people, went on these private premises for the deliberate and avowed purpose of participating in a "sit-in" demonstration "in protest of the segregation laws of the State of Louisiana". (RQ 7-10 and application for writs, page 23) We submit that any normal, reasonable man could reasonably foresee that such acts, for such a purpose, and in such a manner, under existing circumstances would unreasonably disturb or alarm the public.

However, there are other facts which substantiate this position. After seating themselves at the lunch counter from which they knew they were prohibited by policy of the owner and management of the store, the petitioners were told that they would be served at the "counter across the aisle". (RT 13) It would seem apparent to the writer, that under existing circumstances, any reasonable person would have inferred from that statement that they would not be served at the counter at which they were sitting and were being requested to go to the other counter for service. Surely, in view of the above, this court can take the same position here, that this was an "implied objection", that it did in the *Louisville* case when it assumed from the testimony of the manager that he did not object to what the defendant was doing that "surely this is implied consent".

Thereafter, the manager called the police because he "feared that some disturbance might occur" (RT 13). Furthermore, the manager also testified that he called the police because the petitioners would not leave the counter as he requested. (RT 14, set forth below.)

Question:

When service was offered them at the colored counter they didn't move?

Answer:

No.

Question:

And thats why you called the officers?

Answer:

Yes.

The police, upon arriving at the store, in a quiet and peaceable manner, requested, in accordance with the wishes of the manager, that petitioners peaceably leave the counter. Petitioners again refused to move. What course was there for the police officers to take at that point? There were only two courses open. They could have, by the use of physical force and violence, evicted petitioners from the counter. Would not this, in itself, have been a disturbance within the meaning of the statute? We think that the answer is obvious. And who, in fact, would have been the cause of the disturbance? Again the answer is obvious. The petitioners,—in going on private property for the avowed purpose of an unwanted demonstration and in subsequently refusing to move from private property

when requested to do so by the owner,—were the cause.

The only other course that the police officers could take at that point was the one that they did take. They arrested the petitioners and charged them with violation of the statute in question in that they did commit an act or acts which they could, and should have, foreseen would result in unreasonably disturbing or alarming the public.

Petitioners state at page 13 of their application for writs that "there is no evidence that any customer in the store complained about or objected to petitioners' presence at the white lunch counter"; no testimony that the disturbance which the manager "feared . . . might occur" actually ever did occur or even that there was any imminent danger of a disturbance." We respectfully submit that in the absence of the arrest by the police officers the manager would have had to use physical force and violence to evict petitioners and protect his rights, which action would not only have caused a disturbance but would have resulted in the violence and grave disorder that had occurred in many other cities throughout the South.

*We respectfully submit that the action of the manager and local law enforcement officers should be commended rather than condemned in preventing, before it started, the violence, pitched battles, and complete disruption of an otherwise orderly community which occurred in other cities throughout the south*

*as a result of these unwanted demonstrations on private property.*

Therefore, respondent respectfully submits that the rule laid down in the *Louisville* case is not applicable in the case at bar. There was ample evidence here to justify the courts decision and conviction. The defendant in the *Louisville* case was welcome on the premises, was a frequent patron of that establishment, and was there for a normal reasonable purpose knowing that he was welcome. In the instant case, petitioners were not wanted at the lunch counter in question, knew that they were not wanted, went there for the avowed purpose of carrying on and participating in an unwanted demonstration and not for the purpose of normal and reasonable use of the facilities of the store that were available to them.

Therefore, the judgment below does not conflict with the law as declared by this Court in the case of *Thompson v. City of Louisville* and there is no "contradiction posing a grave constitutional issue" which this Court should further consider by granting the writs applied for.

B.

The statute under which petitioners were convicted, as applied to convict them, is not so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.

The Louisiana Statute under attack here is LSA-RS 14:103, which reads in part as follows:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public . . . (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

The attack here is based upon the premise that the statute does not sufficiently define the offense of disturbing the peace. Petitioners, on page 14 of their application for writs, state that " . . . no conventional understanding of the meaning of the words of the statute explains or supports the determination of guilt on the present record . . . ". To the contrary, the offense "disturbing the peace" or "breach of the peace" and the words used in the instant statute have had a clear and conventional meaning in the State of Louisiana, and in fact, every state of the union, since the very beginning of this nation.

As stated in 8 *AM. Jur.* 834, "in general terms, a breach of the peace is a *violation of public order, a disturbance of the public tranquility, by an act or conduct inciting to violence or tending to provoke or excite others to break the peace . . .* it may consist of an act of violence or *an act likely to produce violence*. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, *tending with sufficient directness to break the peace, no more is required. Nor is actual personal vio-*

*lence an essential element in the offense.*" (emphasis supplied)

At page 835 of the cited text, it is stated that "by 'peace' as used in the law in this connection, is meant the *"tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society. It is, so to speak, that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted. Conduct need not be such as is calculated to put one in fear of bodily harm or to have had that effect in order to constitute a breach of the peace."* (emphasis added)

Furthermore, *American Jurisprudence* states a principle, and cites cases in support thereof, which would seem to specifically cover the case at bar. At page 835 thereof, the following principle is set forth:

"An act which if committed at a certain place or time would not amount to a breach of the peace may constitute a crime if committed at another time or place and under different circumstances. In other words, whether or not a given act amounts to a breach of the peace can only be determined in the light of the circumstances attending the act, and the time and place of its commission."

*American Jurisprudence*, as authority for the above principle, cites cases from almost every state in the Union and also decisions of this Honorable Court.

One of the cases cited by petitioners as supporting their theory actually supports the above enumerated principals and the decision of the Louisiana Supreme Court in the instant case. At page 17 of their application for writs, petitioners cite the case of *Cantwell v. Connecticut*, 310 US 296. An examination of that case reveals that the defendant there was engaged in activities promoting his religion on the public streets of New Haven, Connecticut and when asked to stop the objectionable activity and leave, did so immediately. As the Court stated at page 303 of the decision, "on being told to be on his way he 'Cantwell' left their presence".

The Court further found, as stated at page 308 of the reported decision, that "... Jessie Cantwell, ... was upon a public street, where he had a right to be, and where he had a right peacefully to impart his views to others ...". Also, the Court found, as stated on page 310 of the decision that "... we find only an effort to persuade a *will-ing* listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be a true religion." (emphasis supplied by writer)

Throughout the *Cantwell* decision, this Court reaffirms the principles set forth in *American Jurisprudence*, and the cases cited therein, as set forth above. The Court said at page 308 of the *Cantwell* decision that "the offense known as breach of the peace embraces a great variety of conduct destroying



or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others." At page 309 of that decision the Court said "one may, however, be guilty of the offense if he commits acts or makes statements likely to provoke violence and disturbance of good order, even though no such eventualities be intended."

The decision of this Court in the *Cantwell* case, on considering the facts in that case, seems, to this writer, to say that Cantwell was at a place that he had a right to be, that is, the public streets of New Haven, Connecticut, doing what he had a right to do, that is, promoting his religion and that the statute involved could not prevent him from doing that. Again, that decision is not applicable to the facts in the instant case. Here, petitioners were not "upon a public street where they had a right to be". They were upon private property where they were not wanted and from which they had been asked to leave.

It is interesting to note, in connection with this aspect of the case raised by petitioners, that on the day or days immediately preceding these arrests, many members of the Negro race, possibly including the petitioners, paraded on the public streets of Baton Rouge in protest against segregation. Not only were they not arrested for these public demonstrations of their belief, but the very same law enforcement officials involved in this case, assisted them in publicly expressing their opposition to segregation, by preventing other persons, members of the white race,

from interfering with their right to peaceably demonstrate and picket in the promotion of their particular beliefs or views. We mention this to point up the difference between the true factual circumstances in the instant case and those in the *Cantwell* case.

Petitioners cite three other cases with the *Cantwell* case in support of their theory. The case of *Hernon v. Lowry*, 301 US 242, involved a member of the communist party and the construction of a Georgia statute dealing with an "attempt to incite insurrection" as construed by the Georgia Court. This case involved the construction of a very lengthy statute employing many words which did not have a usual or conventional meaning. However, even there, there was a very strong dissent and the Court was evenly divided, five (5) to four (4), as to whether or not even that lengthy and involved statute was so vague and indefinite as to violate the Fourteenth Amendment. In the instant case, the statute is much shorter, simpler and uses words which have a common and ordinary conventional meaning. The case of *Watkins v. United States*, 354 US 178, cited by petitioners, is even less applicable to the case at bar as it involved completely different facts and statutes. It involved the right of a congressional committee to punish for contempt for the failure to answer questions thought not to be pertinent to its inquiry. It has no application to the case at bar. The case of *Scull v. Virginia*, 359 US 344, is likewise inapplicable. It involved the rather lengthy and inarticulate testimony of the Chairman of the Vir-

ginia Legislative Committee as to what portions of an inquiry of that committee were applicable to the defendant in order that the defendant might try to decide what questions he could legally be required to answer. We respectfully submit that there can be no comparison between the lengthy and involved "purposes of the committee's inquiry, rather confusing testimony of the chairman of the committee as to which portions of the inquiry related to the defendant," and the simple, concise, uninvolved, conventional language used in the statute under question.

The other cases cited by petitioner in support of the proposition that "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes" are likewise inapplicable on their facts. In the case of *Lanzetta v. New Jersey*, 306 US 451, the language involved in the statute was the term "gangster" as defined to be "any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, . . .".

The primary trouble with the statute was the use of the word "gang" and the phrase "known to be a member" which have no common ordinary meaning or are susceptible to several different ordinary meanings. We submit, as will be discussed hereinafter, that the words "disturb and alarm the public" have a common and ordinary meaning that are not so vague, as the Court pointed out on page 453 of its decision, "that men of *common intelligence* must necessarily guess at

its meaning . . . ". (emphasis supplied). The cited case of *Raley v. Ohio*, 360 US 423, is clearly inapplicable as it deals not with the construction of a statute but with the, first, explicit instruction of a chairman of a legislative committee that the Fifth Amendment privilege was available to witnesses testifying, and, second, a subsequent prosecution for pleading the privilege when there was an existing "immunity statute" in effect in Ohio. As this Court said on page 438 of the opinion, there were not only "commands simply vague or even contradictory. There was active misleading." And that to support the conviction would be to "sanction the most indefensible sort of entrapment by the state—convicting a citizen for exercising a privilege which the state clearly had told him was available to him". Obviously, this case has no relation to the case at bar. The cited case of *United States v. L. Cohen Grocery Company*, 255 US 81, involved a statute which provided in part that "it is hereby made unlawful for any person to make *any unjust or unreasonable rate or charge in handling or dealing in or with any necessities*; . . . ". As the Court said at page 89 of the opinion, in discussing whether or not the words in this statute provided an ascertainable standard of guilt, "that they do not, . . . , so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary". We agree with the Court that the language itself is so clearly vague and uncertain and sets no ascertainable standard of guilt, that there is no need

to discuss it further. Again, the language in the *Cohen* case and the statute involved is so far removed from the statute involved in the instant case that the *Cohen* case, on its facts, is clearly inapplicable here. Also, the cited case of *Connally v. General Construction Company*, 269 US 385, deals with a statute completely different from the statute here involved. The language involved in that statute was "that not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, prison guard, etc. . . .". Such a provision would require the ordinary citizen, in order not to violate the act, to make an extensive and detailed study of wage conditions in the community. Such language is far removed from the simple concise language of ordinary meaning contained in the statute at bar. The Court did, however, discuss at some length the question of whether given legislative enactments were wanting in certainty and the basis for deciding same. The Court said at page 391 of the opinion and we quote at length below:

"In some of the cases the statutes involved were upheld; in others, declared invalid. The precise point of differentiation in some instances is not easy of statements; but it will be enough for present purposes to say generally that the decisions of the Court, upholding statutes as sufficiently certain, rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly

apply them, *Higrade Provision Company v. Sherman*, 266 US 497, 502, 45S. CT. 141, 69L. Ed. 402; *Omaechevarria v. Idaho*, 246 US 343-348, 38S. CT. 323, 62L. Ed. 763, or a well settled common law meaning, *notwithstanding an element of degree in the definition as to which estimate might differ*, *Nash v. United States*, 229 US 373-376, 33S. CT. 780, 57L. Ed. 1232; *International Harvester Company v. Kentucky*, *Supra*, at page 223 (34S. CT. 853), or, as broadly stated by Mr. Chief Justice White in *United States v. Cohen Grocery Company*, 255 US 81, 92, 41S. Ct. 298, 301 (65L. Ed. 516, 14 ALR 1045), "that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded".

We again submit that the cases cited by petitioners are again, on their facts, inapplicable to the case at bar.

This Court also discussed this question rather thoroughly in the case of *Nash v. United States*, 229 US 373-376, 33S. Ct. 780, 57L. Ed. 1232. In that case this Court quoted with approval the statement that "*the criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct*". (Emphasis added) The Court was there dealing with the Anti-trust Act, the language of which, goes far beyond the statute presently before the Court in being involved, complicated and not having the certainty that men of "common intelligence" could reasonably ascertain its



meaning. The Court upheld the act as against this contention.

The Supreme Court of the State of Louisiana in the case of *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851, in considering a "disturbing the peace" ordinance which had no definition within its framework, made the following comments:

" . . . the first objection raised is that the ordinance does not define the offense of disturbing the peace; that is, does not set out what acts shall constitute a disturbance of the peace.

"It was not necessary that the ordinance define the offense, for the reason that no better definition for the offense could be found than that contained in the ordinance itself. To disturb means to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet. If the framers of the ordinance had attempted to define the word 'disturb' they could have done no better than to say that the word means to agitate, arouse, perplex or disquiet. But why attempt a definition when each of those words has practically the same meaning as the word 'disturb'? . . .

"It is further contended that the ordinance should have specified the particular acts necessary to be done in order to constitute a disturbance of the peace. It would be difficult indeed to specify in an ordinance all the different acts by which the peace and quiet of the inhabitants of a town might be disturbed. A disturbance of the peace may be created by any act or conduct of a person which molest the inhabitants in the



enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal temperament. Such acts to come within purview of the ordinance must be voluntary, unnecessary, and outside or beyond the ordinary course of human conduct . . . ”.

This case and its holding, has never been reversed and is still the law of the State of Louisiana. It has been the law, as enunciated by the State Supreme Court, since it was decided in 1932.

The cited case of *State v. Sanford*, 203 La. 961, 14So. 2nd 778, is similar, on its factual situation, to the *Cantwell* case, cited above, as decided by this Honorable Court. It involved a statute similar to the one in the instant case. Briefly, the defendants were members of Jehovah's Witnesses, a religious sect and had been warned by the Mayor of Logansport, Louisiana, that the people in Logansport did not agree with the tenants preached by Jehovah's Witnesses; that if they, the defendants, attempted to disseminate their literature in Logansport a disturbance would likely occur, and that they should not so do. After this warning, the defendants, came upon the public streets of Logansport and in an orderly manner attempted to distribute literature of their religion by offering same to other people on the public streets and if such offer was declined went on to the next person. There was no violence or disturbance and *no attempt by the members of Jehovah's Witnesses to force their reli-*

*gious beliefs and their religious literature on unwilling persons.*

It is to be noted here that the facts in this case and in the *Cantwell* case, cited above, and decided by this Court, differ in at least two important respects from the facts in the case at bar. In both this case and the *Cantwell* case, the defendants were utilizing the public streets, where they had a right to be, to disseminate or distribute their religious beliefs to persons who were willing to listen. And even in the *Cantwell* case when there was objection by two persons to the anti-Catholic record, the defendant immediately stopped playing the record and left. *In the instant case, defendants were not on the public streets where they had a right to be, they were on private property where they knew, or reasonably should have known, they were not wanted, conducting a demonstration that they knew, or should have known, was not wanted on those private premises, and after being asked to leave the private premises, refused to do so.*

The Louisiana Supreme Court in the *Sanford* case merely held that the statute involved was not applicable to the facts in that particular case. It did not declare the statute to be unconstitutional and said statute has never been declared unconstitutional by the Supreme Court of the State of Louisiana. In fact, it has been used many times since to prevent disturbances of the peace by members of the white race as well as by members of the Negro race.

The facts in the instant case are more nearly similar to the facts existing in the case of *State v. Martin et al*, 199 La. 39, 57So. 2nd 377 (1941) in which the defendant there was also a member of Jehovah's Witnesses. The defendant, in order to promote her religion and distribute its literature, went onto property of a Mrs. Mackey, who after being informed by defendant of the purpose of her visit promptly ordered the defendant off "the private premises". The defendant then left the home of Mrs. Mackey but went to other homes on the farm owned by Mrs. Mackey, again for the same purpose of promoting her religion and distributing its literature. After Mrs. Mackey found that defendant was still on her land, she ordered the defendant to leave, and the defendant refused to do so. Mrs. Mackey then filed a complaint against the defendant charging her with committing trespass.

After trial, the Louisiana Supreme Court upheld the conviction as not being a violation of the Fourteenth Amendment and First Amendment of the United States Constitution with the following comment:

"These guarantees of freedom of religious worship and freedom of speech and of the press, do not sanction trespass in the name of freedom. We must remember that personal liberty ends where the rights of others begins. The constitutional inhibition against the making of a law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, does not con-

flict with the law which forbids a person to trespass upon the property of another . . . ”.

Respondent respectfully submits that the term “disturb or alarm” as used in the statute under attack has a clear, common, conventional meaning and that any reasonable person of “common intelligence” can ascertain whether or not his acts come within the prohibition of the statute. *Black's Law Dictionary*, 3rd edition, defines disturb as follows:

“Disturb. To throw into disorder; to move from a state of rest or regular order; to interrupt a settled state of, to throw out of course or order.”

It defines disturbance as “any act causing annoyance, disquiet, agitation or derangement to another, or interrupting his peace, or *interfering with him in the pursuit of a lawful and appropriate occupation* or contrary to the usages of a sort of meeting in class of persons assembled that interferes with his due progress or irritates the assembly in whole or in part.” (emphasis supplied) *Richardson v. State*, 5 Tex. App. 472; *State v. Stouff*, 11 Wash. 423, 39 P. 665; *George v. George*, 47 N. H. 33; *Varney v. French*, 19 N. H. 233; *State v. Mancini*, 91 Vt. 507, 101 A. 581, 583.

The new *Century Dictionary* defines disturb as follows:

“To throw into commotion or disorder; agitate; disorder; disarrange; unsettle; also, to interrupt the quiet, rest or peace of; disquiet; also, to agitate the mind of; . . . an outbreak of disorder; a breach of public peace; in law inter-

*ference with the peaceful exercise of a right or privilege."* (emphasis supplied)

The same dictionary defines "alarm" as follows:

" . . . a warning notice, as of danger; a signal; . . . also, painful excitement due to sudden apprehension of danger; sudden fear; . . . also, to disturb with sudden fear; to fill with alarm . . . . "

Respondent respectfully submits that there have been, over so great a number of years, so many statutes in so many states, so many ordinances in so many towns, throughout our nation, which prohibit "disturbing the peace" many without any other definition than the offense itself, and many with a definition, at least similar to the statute under attack, in the use of the words "disturb or alarm the public", that these terms have a common, ordinary, conventional and well understood meaning which any reasonable man, or person of common intelligence, may determine whether his proposed conduct or acts come within the prohibition of the statute under the rules laid down by the Louisiana Supreme Court and by this Honorable Court in meeting the requirements of the Fourteenth Amendment to the United States Constitution.

We have already referred the Court to *Volume 8 of American Jurisprudence page 835, Section 4*, and cases cited therein, which states that an act which if committed at a certain place or time would not amount to a breach of the peace may constitute a crime if

committed at another time or place and under different circumstances. In other words, whether or not a given act amounts to a breach of the peace can only be determined in the light of the circumstances attending the act, and the time and place of its commission. Under the time and circumstances involved in this case, that is, the petitioners knowing of the violence and disorder which had attended almost every sit-in demonstration conducted in other cities of the South, their avowed purpose in going on private premises for the purposes of participating in a demonstration to protest segregation, and their subsequent refusal to leave the private premises, after being requested to do so, it would appear clear that their acts were deliberate and did constitute a breach of the peace. Furthermore, breach of the peace does not mean that violence is essential. It is not necessary that an act have in itself any element of violence in order to constitute a breach of the peace. For support of this contention we would refer the Court to cases cited above and to 9 *Corpus Juris* 386, 387, section 1 and 2, and cases cited therein.

Therefore, respondent respectfully submits that the statute under attack, as applied to these defendants, is a valid enactment of a state legislature, and does not offend the due process clause of the Fourteenth Amendment.

C.

The decision below does not conflict with prior

**decisions of this court which condemn racially discriminatory administration of state criminal laws.**

The statements contained in the first paragraph on page 18 of petitioners application for writs are erroneous in their interpretation of the record and the testimony. A brief examination of that testimony will indicate this to be true.

On page 10 of the transcript of the testimony of Mr. R. R. Mathews, Manager of Kress' Store, the following questions and answers appear:

**Question:**

Why did you advise these defendants to go over to the other cafe counter seats?

**Answer:**

Because by custom we serve colored people at the other counter.

**Question:**

That's the custom of your store?

**Answer:**

Right.

#### **Redirect Examination**

**Counsel Roy:**

**Question:**

That's the custom, not of your store but the custom of your employer, is that right, custom of the people you work for, not your custom?

**Answer:**

Correct.



Furthermore, the testimony of Captain Robert Weiner, also as contained in the transcript of testimony as contained in the record, indicates that he was acting pursuant to the request of the manager of the department store and he considered the defendants as violating the statute because they remained at the counter in the store reserved for other persons after they had been directed and requested to go to another portion of the store. (RT11-14) The fact, as contained in the testimony, that other Negroes were in other areas of the store with consent of the manager, and were not arrested, clearly indicates that this was not state action against the Negro race.

The real question, and the only question, presented by Articles 5 and 6 of petitioners' Motion to Quash (RQ7-10) and Reason 1 (C) of their application for writs, pages 18 thru 22 of said application, is whether or not a private property owner and proprietor of a private establishment has the right to serve only those whom he chooses and to refuse to serve those whom he desires not to serve for whatever reason he may determine. If the private proprietor has such right to serve or not serve, then a second question is immediately presented. Must he resort to physical force and violence to make unwanted persons leave his establishment, thereby creating a disturbance, or may he call upon local law enforcement agents to protect his rights and either evict the unwanted persons by force or arrest them for committing an act in such a manner as to unreasonably alarm or disturb the public.

In the case of *State v. Clyburn*, 247 North Carolina 455, 101 S.E. 2nd, 295, the North Carolina Supreme Court in its opinion said: "The right of an operator of a private enterprise to select the clientele he will serve and to make such selection based on color, if he so desires, has been repeatedly recognized by the Appellate Courts of this Nation. *Madden v. Queens County Jockey Club*, 72 NE 2nd 697 (New York); *Terrell Wells Swimming Pool v. Rodriguez*, 182 SW 2nd 824 (Texas); *Booker v. Grand Rapids Medical College*, 120 NW 589 (Michigan); *Younger v. Judah*, 19 SW 1109 (Missouri); *Goff v. Savage*, 210 P 374 (Washington); *De La Ysla v. Publix Theatres Corporation*, 26 P 2nd 818 (Utah); *Brown v. Meyer Sanitary Milk Company*, 93 P 2nd 651 (Kansas); *Horn v. Illinois Central Railroad Company*, 64 NE 2nd 574 (Illinois); *Coleman v. Middlestaff*, 305 P 2nd 1020 (California); *Fletcher v. Coney Island*, 136 NE 2nd 344 (Ohio); *Alpaugh v. Wolverton*, 36 SE 2nd 906 (Virginia)."

In further support of this proposition, we would refer the court to the *Civil Rights Cases*, 109 US 3, 3 S. Ct. 18, 27 L.Ed. 35, and the cases of *Williams v. Howard Johnson Restaurant*, 268 Federal 2nd 845 and *Slack v. Atlantic White Tower System*, 181 F. Supp. 124. The *Howard Johnson Restaurant* case was decided by the Fourth Circuit Court of Appeals on July 16, 1959. The opinion of the court was written by Judge Soper and was joined in by Chief Judge Sobeloff and Circuit Judge Haynesworth. We men-

tion Judge Sobeloff because he was Solicitor General of the United States at the time of the school segregation decision and wrote a brief on behalf of the United States attacking segregation in public schools.

The court pointed out that the Fourteenth Amendment was prohibitory upon the States only, so as to invalidate all state statutes which abridged the privileges or immunities of citizens of the United States, or deprive them of life, liberty or property without due process of law, or deny to any person the equal protection of the laws; but that the amendment did not invest Congress with power to legislate on the actions of individuals, which are within the domain of state legislation.

In that case the court held:

"The essence of the argument is that the state licenses restaurants to serve the public and thereby is burdened with the positive duty to prohibit unjust discrimination in the use and enjoyment of the facilities.

This argument fails to observe the important distinction between activities that are required by the state and those which are carried out by voluntary choice and without compulsion by the people of the state in accordance with their own desires and social practices. Unless these actions are performed in obedience to some *positive provision of state law* they do not furnish a basis for the pending complaint. . . . the customs of the people of a state do not constitute state action within the prohibition of the Fourteenth Amend-

ment. As stated by the Supreme Court of the United States in *Shelly v. Kramer*, 334 US 1, 68 S. Ct. 836, 92 L. Ed. 1161:

'Since the decision of this court in the Civil Rights Cases, 1883, cited above, the principal has become firmly imbedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the states. That amendment erects no shield against merely private conduct however discriminatory or wrongful.'

. . . as an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above, and thus, is at liberty to deal with such persons as it may select. Our conclusion is, therefore, that the judgment of the District Court must be affirmed." (emphasis added)

And in *Slack v. Atlantic White Tower System*, cited above, the court, in its opinion, said in part that " . . . (3) in the absence of statute, the rules are well established that an operator of a restaurant has a right to select the clientele he will serve and to make such selection based on color, if he so desires . . . "

The present prosecution of the petitioners is not based upon any law of the State of Louisiana requiring segregation of the races in private establishments. In fact, no such state law exists. The State of Louisiana has never attempted to tell the owners of private establishments that they must maintain segre-

gated facilities. Neither has the State of Louisiana ever attempted to tell the proprietors of private establishments that they must maintain integrated facilities. "The right of property is a fundamental, natural, inherent, and inalienable right. It is not *ex gratia* from the legislature, but *ex debito* from the constitution. In fact, it does not owe its origin to the constitutions which protect it, for it existed before them. It is sometimes characterized judicially as a sacred right, the protection of which is one of the most important objects of government. The right of property is very broad and embraces practically all incidents which property may manifest. Within this right are included the right to acquire, hold, enjoy, possess, use, manage, . . . property." 11 *Am. Jur., Constitutional Law*, section 335.

If then, the private proprietor had the right legally to refuse service and thereafter require them to leave, did he not also have the right to forceably remove them. We submit that it is axiomatic that he did. In support of this proposition we would refer the court to 9 *ALR*, page 379; 4 *Am. Jur., Assault and Battery*, section 76, page 167; and 6 *Corpus Juris Secundum, Assault and Battery*, section 20, page 2. Thus, it is said in 4 *Am. Jur. Assault and Battery*, section 76, page 168; "even though the nature of the business of the owner of the property is such as impliedly to invite to his premises persons seeking to do business with him, he may, nevertheless, in most instances refuse to allow a certain person to come on

his premises, and if such person does thereafter enter his premises, he is subject to ejection although his conduct on the particular occasion is not wrongful." It is also said at 6 *Corpus Juris Secundum*, *Assault and Battery*, page 821, that "the motive of the owner of land in ejecting trespassers from his premises is immaterial so long as he uses no more force than is necessary to accomplish his purpose."

In the recent case of *Griffin et al v. Collins et al* decided August 25, 1960, by the United States District Court, District of Maryland, and reported at 187 *F. Supp.* 149, which was a class action to prevent the arrest for trespass of Negroes who visited the Glenn Echo Amusement Park in Montgomery County, Maryland, in opposition to the all-white policy of its owner and operator, the plaintiff's prayed that the court "A. Adjudge and declare that the defendants acts in utilizing governmental authority and powers of the state and the sanctions of state law to aid, support and enforce the denial to plaintiff, solely because of their race, of admission to Glenn Echo Park and enjoyment of its facilities, are in violation of plaintiffs rights under the constitution and laws of the United States; . . . "

The facts in that case were that the plaintiffs had entered the amusement park and after having been told to leave, refused to do so, and the private guard, acting pursuant to his authority as a Special Deputy Sheriff for Montgomery County, did arrest the plaintiffs for violation of the Maryland Code. The plain-



tiffs were orderly and there was no physical disturbance.

The court in its decision made the following correct statement of the law:

"Plaintiffs concede the right of the corporate defendants, as owners and operators of Glenn Echo Park, to serve or refuse to serve whomever they please, and concede that said defendants like other property owners or operators of a private business may use "self-help" to eject a Negro who insists on remaining on the premises after being told to leave. Counsel argued, however, that if the proprietor of a business calls a police officer, deputy sheriff, or other state officials to remove or arrest the Negro, such action or arrest would (1) violate the equal protection and due process clauses of the Fourteenth Amendment, which forbids state imposed racial discrimination in the field of recreational activity, and (2) deprive the Negro of his rights under 42 USCA 1981 and 1983. . . .

*Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights. . . ." (emphasis supplied)*

We respectfully submit that the legal principal, as stated by the Federal District Court in the above decision, is the correct legal principal and applies with full force and vigor to the present cases. The proprietors herein, rather than resort to physical force



resulting in a fight and disturbance, exercised their right to call upon peace officers to protect their rights. We submit that the instant cases comes squarely within the purview of the legal principal quoted above.

Most of the cases cited by petitioners in their application, and particularly *Gibson v. Mississippi*, 162 US 565; *Buchanan v. Warley*, 245 US 60; *Holmes v. City of Atlanta*, 350 US 879; *Gayle v. Browder*, 352 US 903; *State Athletic Commission v. Dorsey*; 359 US 533; *Evers v. Dwyer*, 358 US 202 and *Yick Wo v. Hopkins*, 118 US 356, are cases involving either an actual existing state law which required segregation, or the administration of a state law so as to discriminate against a particular group or class.

Such is not the case here. The state law prohibiting "disturbing the peace" applies equally to all persons whether white or Negro, male or female, rich or poor, or otherwise. The statute does not require segregation and does not provide a penalty for failure to segregate.

To permit the contention of plaintiffs herein to be established as the law of this nation would be to completely obliterate and trample the rights of owners of private property to keep unwanted persons off their property. It would further prohibit almost any one from calling upon peace officers to protect their rights. We respectfully submit that no portion of the Constitution requires such a state of affairs to exist.

## D.

The decision below does not deprive plaintiffs herein of the freedom of speech, or expression, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

Here, petitioners attempt to bring their position under the First Amendment to the United States Constitution as applied to the States by the Fourteenth Amendment on the basis of two arguments, and cases cited in support thereof, both of which are inapplicable to the instant case.

First, they claim that their right to express their opposition to segregation customs is guaranteed to them by the First and Fourteenth Amendments to the United States Constitution. The State of Louisiana did not, and we do not here, deny their right to express themselves as being in opposition to the custom of segregation. The fact that the state does not deny them such right is clearly shown by the fact that at the time these "sit-ins" took place, these petitioners, and/or others in a similar position, picketed one or more of these establishments by marching up and down the streets and sidewalks of the City of Baton Rouge with placards and posters. They were not interfered with by the police and no arrests were made. In fact, the police department of the City of Baton Rouge maintained officers in the area of the picketing to insure these petitioners their right to freely express their opinion as guaranteed by the First Amendment. Furthermore, these petitioners, and/or others in a similar

position, marched on the State Capitol and again engaged in a loud demonstration voicing their protest of segregation. Once again, the police department of the City of Baton Rouge not only did not interfere with their right to do so, but actually maintained officers for the purpose of seeing to it that other people did not interfere with their right to freely express their opinion on the public streets of the City of Baton Rouge as guaranteed by the First Amendment.

It would seem apparent from these facts, which are common knowledge, that the state did not, and does not, deny these petitioners, and/or others in a similar position, the right to freely express themselves in a lawful manner.

We do however question their right, or anyone else's right, regardless of race, color or creed, to express themselves on any subject on private property without having been invited to do so by the owner, and particularly, when the owner has made it apparent that he does not want them on his premises.

The cases cited on page 23 of petitioners' brief in support of the right to picket, to distribute handbills, to display motion pictures, to join associations, and to display a flag or symbol, are clearly not applicable to the instant cases. By calling a "sit-in" a symbol, petitioners infer that the right to "sit-in" is unrestricted and may be done at any time and at any place regardless of other circumstances and regardless of the rights of other citizens. This, of course, is a false inference. No one questions the exercise of these rights by the

petitioners if exercised at a proper place and hour. However, it is not an absolute right.

The answer to such contention is given by the court in *Kovacs v. Cooper*, 336 US 77, 93 L. Ed. 513, 10 ALR 2nd 608: "Of course, even the fundamental rights of the Bill of Rights are not absolute. The *Sala* case recognized that in this field by stating "the hours and place of public discussion can be controlled." It was said decades ago, in an opinion of this court delivered by Mr. Justice Holmes in *Schenck v. United States*, 249 US 47, 52, 63 L. Ed. 470, 473, 39 S. Ct. 247, that: "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. *Hecklers may be expelled from assemblies and religious worship may not be disturbed by those anxious to preach a doctrine of atheism.* The right to speak ones mind would often be an empty privilege in a place and at a time *beyond the protecting hand of the guardian of public order.*" (emphasis added) This principal is still embodied in our law under the latest decisions of this Honorable Court.

Petitioners then cite the case of *Terminiello v. Chicago*, 337 US 1, in further support of their right to freedom of expression even though it induces a condition of unrest or even stirs people to anger. Although, we do not admit that petitioners right to freedom of expression is so unrestricted as to allow them

to create unrest and anger to the point of inciting riot, we point out, in answer to their citation of the *Termi-niello* case, that their right to express themselves in opposition to segregation, when done at a proper time and place, has not been denied to them. To the contrary, local police officials protected their right to so do as demonstrated by the protected picketing and marching on the State Capitol.

The second argument urged by petitioners in order to bring their action under the protection of the First and Fourteenth Amendments is based upon the decisions of this court in the cases of *Marsh v. Alabama*, 326 US 501 and *Cantwell v. Connecticut*, 310 US 296, which have been discussed hereinabove. Again the argument made, and the cases cited, are inapplicable to the present situation as in the *Cantwell* case the defendants, contrary to the situation here, were espousing their religious beliefs on the *public streets of a town* and when they were asked to cease the offensive action, immediately did so.

Again, in the *Marsh* case, the court found that the defendants were expounding their views on the *public streets of a town which was public in nature*. Although we do not here admit to the correctness of the courts decision in the *Marsh* case, in holding that private property, merely because a large number of people live thereon, becomes public in nature, we would point out that *this court*, before upholding the defendants right to espouse his personal views thereon, first felt constrained to find that the property in-

*involved had become public in nature.* There can be no doubt that the property here involved was purely private in nature.

On page 26 of their application petitioners cite the words of Justice Holmes in the *Schenck* case in support of the proposition that a "clear and present danger" must be found. Again, that is not the question here. The only question here is where the free expression may take place. Do the petitioners have a complete unrestricted and unfettered right to express themselves on any subject on anyone's private property, whether business or home, and even though unwanted thereon? We respectfully submit that they do not.

In their concluding paragraph on page 26, petitioners assert that the state has the power to prevent only two evils: (1) disturbance of the peace; (2) non-segregation at lunch counters—and then state that there was no clear and present danger as required by the *Schenck* case and that the state has no power to compel segregation, citing *Brown v. Board of Education*, 347 US 483 and *State Athletic Commission v. Dorsey*, 359 UC 533. They then conclude by saying " . . . having no valid interest to preserve, the state has no power to impose criminal penalties for the expression in which petitioners here engage."

However, petitioners completely ignore a third very important and very valid interest which any state or government has the right to preserve—that is, the right of other citizens to be secure in the quiet



and peaceful enjoyment of their private property. "The right of property is a fundamental, natural, inherent, and inalienable right . . . it does not owe its origin to the Constitutions which protect it, for it existed before them. It is sometimes characterized judicially as a sacred right, *the protection of which is one of the most important objects of government.*" 11 Am. Jur., *Constitutional Law*, section 335.

### CONCLUSION

There can be no doubt in the mind of the court, or anyone else, that the demonstrations involved herein were deliberately planned and organized. Petitioners, at page 23 of their brief, state "their presence at these counters expressed in Baton Rouge what thousands of other Negro students have been manifesting throughout the nation . . . ." And again at page 27, "this case presents issues posed by numerous similar demonstrations throughout the nation . . . ." Nor can there be any doubt that the property on which petitioners engaged in these demonstrations was private property. Petitioners cite no case in which Kress's Department Store, or any other department store, has ever been held to be a public body by this court or any other court. Neither can there be any doubt that the manager and owner of the stores in question did not want any such demonstration on their private property. The testimony of the manager, as contained in the trial record, explicitly makes this clear. Furthermore, there can be no doubt that these petitioners *knew* that such a demonstration was unwanted. Not only would



they have known it from being residents of Baton Rouge, but in their Motion to Quash, they specifically state that they did, "in protest of the segregation laws of the State of Louisiana, . . . "sit-in" a cafe counter seat reserved for members or persons of the white race, . . . " Furthermore, there can be no doubt that, these petitioners knew, because of the results of other such demonstrations in other towns throughout the South, that their unlawfully remaining on private property could foreseeably result in violence and disorder.

Petitioners here, instead of lawfully and peaceably expressing themselves by picketing, by the use of newspapers, radio and television, or by mass meetings on private property to which they had been invited, deliberately, and as part of a well organized nationwide plan, proceeded to intrude on the private property of other citizens to engage in unwanted demonstrations. To uphold their right to so do, is to trample the rights of all other citizens.

These defendants were convicted of violating a valid state statute which they knew, or reasonably should have known, they were violating. The statute in question applies to everyone equally, regardless of race or color, and is not designed, nor applied, to enforce racial discrimination. Their right to lawfully express themselves was not only not denied but was in fact protected by the very same law enforcement officials that they herein condemn.

The contention that the decision below, if allowed to stand, will in effect undermine numerous decisions of this court striking down state enforced racial discrimination is ridiculous. The examples cited on page 29 of petitioners application, ie, state statutes requiring segregation on buses; state statutes requiring segregation at athletic events; and state statutes requiring segregation in schools, could not possibly be affected.

If the defendants have the right to be at the place where their acts are done, such as buses, schools, etc., the convictions would not stand as long as their acts were lawful. The trouble with petitioners argument here is, that *they had no right to do what they did at the place that they were.*

In conclusion, we respectfully submit that allowing the decisions below to stand will merely reaffirm the right of all citizens, regardless of race or color, to be secure in the use and enjoyment of their private property; and to be secure against unwanted intrusions and demonstrations. A right which also deserves the protection of the Constitution and this Honorable Court.

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1960**

**No. 617**

**JOHN BURRELL GARNER, ET AL., PETITIONERS**

**v.**

**STATE OF LOUISIANA, RESPONDENT**

**ADDITIONAL COMMENT AND ARGUMENT  
WITH RESPECT TO THIS PARTICULAR  
CASE**

As set forth at the beginning of this brief, we respectfully submit, in toto, in opposition to the application for writs in this case, the comment, argument, and authority cited in the preceding portion of this brief.

However, because of a very slight difference in the factual situation, we respectfully submit, at this point, additional comment and argument in opposition to this particular petition.

**STATEMENT OF THE CASE**

On March 29, 1960, petitioners in the instant case, entered the restaurant portion of Sitman's Drug Store in Baton Rouge, Louisiana, seated themselves at the counter and requested service. (RT 9 and 11) This business establishment is solely owned by Mr. Riggs T. Willis, a citizen of Baton Rouge, Louisiana (RT 9 and 12). Mr. Willis, under a long established and well known policy of his, did not serve members of the

Negro race in the restaurant facility (RT 11). After these defendants had seated themselves at the counter in the restaurant and requested service, Mr. Willis, the owner, informed them that they would not be served (RT 9 and 10). Although these defendants knew that the owner of the restaurant did not serve members of their race therein, and although they were specifically told by the owner of the establishment that they would not be served, (RT 9) they refused to leave the premises (RT 10).

At the time this occurred there was a police officer outside of this establishment patrolling his customary beat and performing his normal customary duties. This police officer, being a citizen of Baton Rouge, knew, as did all other citizens of Baton Rouge, that the owner of this particular establishment did not serve members of the Negro race in the restaurant. This police officer also knew of the "sit-in" demonstrations which were being done deliberately throughout the South. He was also aware of the violence and disorder which had resulted in other cities because of these demonstrations. This officer, being a capable and well trained police officer, and desiring to prevent any breach of the peace or good order of his community, called his superiors to report what was taking place (RT 14).

His superior officers, Captain Weiner and Major Bauer came to the establishment in response to his call. Upon arriving at the establishment, and also knowing of the policy of the owner of the store not to serve

members of the Negro race in his private restaurant, they requested these defendants to peaceably leave the premises (RT 17). These defendants still refused to leave the premises (RT 17). Then, and only then, were these defendants arrested and charged under the statute in question.

After normal and orderly judicial procedure, in which every right of the defendants was preserved and protected, the Trial Court found the defendants guilty of violating the statute in question. The Trial Court found that these defendants entered this restaurant which, under its policy would not serve them, refused to leave after being told by the owner that they would not be served, and again refused to leave when requested to do so by the police officers.

The Trial Judge, in finding the defendants guilty, said, "the Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, *the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public*" (RT 18). (Emphasis added)

### ARGUMENT

The only difference in facts between this case and the companion *Hoston* case, is that here the owner did not actually call the police. Otherwise the facts are identical. These petitioners, entered upon private

premises where they knew they were not wanted, for the avowed purpose of protesting segregation customs. (see paragraph 7 of "Motion to Quash" as contained in the record). They were told by the owner that they would not be served. They refused to leave. Police officers, in assisting the owner in maintaining his right to refuse service and admission to his private property to whomever he chose, peaceably and quietly requested the defendants to leave. Again, they refused to leave. Only then were they arrested and charged under the statute.

We respectfully submit that this case is therefore identical to the *Hoston* case discussed in the preceding portion of this brief and again reiterate each and every comment and argument made with respect to the *Hoston* case in support of our opposition to the application for writs herein. Under these circumstances, the only way the owner and the police officers could protect the owners rights, which, at this particular place and time, were paramount to petitioners rights, was either to resort to physical violence to eject the defendants or to arrest and charge them as was done. There can be no doubt that the use of physical force by the owner or by the police officers to protect the owners rights would have resulted in, and in fact, would have been, a disturbance within the meaning of the statute. It is common knowledge that violence incites violence. That fights and the use of physical force in public places can often result in complete disorder. Would it have been

better for the owner to physically eject these defendants when they refused to leave? Would it have been better for the police officers to physically eject these defendants when they again refused to leave? We respectfully submit that it would not. That such action would only have resulted in a greater disturbance and greater disruption of the peace and order of our community.

These defendants had no right to be where they were. The owner, to the contrary, did have the right to demand that they leave. He also had the right to physically eject them if he so desired, and, if he had the right to physically eject, "it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights." *Griffin et al v. Collins et al*, 187 F. Supp. 149.

Petitioners, in support of their position, cite the case of *Boman v. Birmingham Transit Company*, 280 F. 2nd 531, in fact, petitioners quote therefrom, with emphasis added, the following statement: "The police officers were without legal right to direct where they should sit because of their color." This case involved a public bus transportation system, operating under a franchise granted by the State, and which, because of the franchise, the Court had found to be a *State agency* and therefore *state action* requiring segregation which is prohibited. Such is not the case here.

The establishment involved here was not a public facility, was not operated by or franchised by the state,



and the state had no law requiring segregation on these premises. Consequently, under general principals of law enunciated by this Court many times, and particularly under the rulings in the cases of *Williams v. Howard Johnson Restaurant*, 268 F. 2nd 845 and *Griffin et al v. Collins et al* 187 F. Supp. 149, discussed before, *these police officers did have a legal right to direct the defendants to leave*. If they had the legal right to demand that these defendants leave the premises, they also had a legal right to arrest them for refusing to leave.

In conclusion, we respectfully submit that the instant case is on all fours with the companion *Hoston* case, and, for the reasons cited therein and the foregoing reason, we respectfully submit that the petition for writ of certiorari in the instant case should also be denied.

**In the  
Supreme Court of the United States**

OCTOBER TERM, 1960

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No. 618

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

**ADDITIONAL COMMENT AND ARGUMENT  
WITH RESPECT TO THIS PARTICULAR  
CASE**

As set forth at the beginning of this brief, we respectfully submit, in toto, in opposition to the application for writs in this case, the comment, argument, and authority cited in the preceding portion of this brief.

However, because of a very slight difference in the factual situation, we respectfully submit, at this point, additional comment and argument in opposition to the application for writs in this particular case.

**STATEMENT OF THE CASE**

This case, on its facts, is also identical to the companion *Hoston* case. On March 29, 1960, petitioners in the instant case, went into the private restaurant in the Greyhound Bus Station, knowing that it was an established policy of the owner and manager not to serve members of the Negro race in such restaurants, sat down therein and demanded service. One of the employees of the restaurant told them that

they would have to go to the other side of the restaurant to be served (RT 14). The employees also requested them to move (RT 13). After these petitioners refused to move, the employee called the police to assist her in maintaining the rights of the owner to refuse service to whomever he desires (RT 13 and 15).

After the officers arrived, pursuant to the request of the employee, they quietly asked the defendants to leave (RT 19, 22, and 23). It was only after they refused to obey the lawful command of the law enforcement officers that they were arrested and charged under the statute (RT 22 and 23).

### **ARGUMENT**

Again, the situation is identical to the companion *Hoston* and *Garner* cases. These defendants went on private property where they knew they were not wanted, for the avowed purpose of staging an unwanted demonstration in protest of segregation customs. (see paragraph 7 of "Motion to Quash" contained in the record). The owner's employee made a legitimate and lawful request for them to leave. They refused to do so. In order to maintain the legal right of the owner, the employee called upon local law enforcement agents for assistance. The law enforcement officers, carrying out their responsibility to protect the rights of all citizens, made a lawful request that the defendants leave. Again, the defendants refused to leave. Then, and only then, did the officers arrest the defendants and charge them under the statute.

Again, we respectfully submit that this case is on all fours with the companion *Hoston* case, and we here reiterate each and every comment, argument and authority cited previously in the *Hoston* case in support of our opposition herein and respectfully submit that the petition for writ of certiorari should be denied.

## CONCLUSION

(Submitted with respect to all three cases)

Although petitioners in all three cases allege four questions presented to the Court, all four of these questions rest upon two basic propositions which the petitioners are asking this Court to uphold: 1- That no private business man may choose or select his customers as he sees fit, for whatever reason he chooses, and 2- That even if he does have such legal right, he cannot enforce or protect that right, and in no event may he call upon local law enforcement agencies to assist him in protecting that right, and 3- That law enforcement agents, charged with the responsibility of maintaining peace and order in a community, cannot act to prevent a breach of that peace and order by curtailing acts which could reasonably be expected to result in such a breach of the peace but must wait instead until physical violence and community disorder actually results.

With respect to the first contention, we respectfully submit that the long line of decisions of this Court as cited in 9 ALR 379, and as held in the *Howard Johnson* case, the *Atlantic White Tower System* case, and others, discussed hereinbefore, stands for the proposition that, " . . . although the general public have an implied license to enter a retail store, the proprietor is at liberty to revoke this license at any time as to any individual and to eject such individual from the store if he refuses to leave when

*requested to do so.*" (emphasis supplied) As was said by Justice Holmes, speaking for the Court in *Terminal Taxi Cab Company v. Kutz*, 241 US 252, 256, 60 L. Ed. 984, 987, a suit to restrain the public utilities commission from exercising jurisdiction over the business of a taxi cab company: "It is true that all businesses, and for the matter of that, every life in all its details, has a public aspect, some bearing upon the welfare of the community in which it is passed. But however it may have been in earlier days as to the common calling, it is assumed in our time that an invitation to the public to buy does not necessarily entail an obligation to sell. *It is assumed that an ordinary shop keeper may refuse his wares arbitrarily to a customer whom he dislikes . . .*" (emphasis supplied).

Nor have the petitioners been able to cite any cases which are applicable to the situation which obtains in the instant case. For instance, *Cooper v. Aaron*, 358 US 1, 3 L. Ed. 2nd 5-Public Education; *Bowman v. Birmingham Transit Company*, 280 F. 2nd 531-Public Transportation; *Gibson v. Mississippi*, 162 US. 565-Public Jury Procedures; *State Athletic Commission v. Dorsey*, 359 US 533-State Public Segregation Statute; *State v. Sanford*, 203 La. 961, 14 S. 2nd 778-Use of Public Streets; *Cantwell v. Connecticut*, 310 US 296-Use of Public Streets; *Marsh v. Alabama*, 326 US 501-Use of Public Streets; *Brown v. Board of Education*, 347 US 483-Public Schools; and *Orleans*

*Parish School Board v. Bush*, 242 F. 2nd, 156-Public Schools.

We respectfully submit that private property has not yet reached the point of socialization and communization that is here contended for by the petitioners.

With respect to the second proposition, we respectfully submit that to say that a private businessman has certain rights with respect to his private property and then say that he cannot enforce or protect those rights is to completely nullify the right itself. We submit that the right of the private business man and property owner here involved is too important, too fundamental, to permit such theory even the dignity of review. "The right of property is a fundamental, natural, inherent, and inalienable right. It is not *ex gratia* from the legislature, but *ex debito* from the Constitution. In fact, it does not owe its origin to the Constitution which protects it, for existed before then. It is sometimes characterized judicially as a sacred right, the protection of which is one of the most important objects of government . . ." 11 *Am. Jur., Constitutional Law*, section 335.

Furthermore, the right here involved goes further than mere property rights. It also involves personal freedom. It involves the right of an individual to choose his associates and to decide for himself with whom he shall do business. Certainly this right, particularly when exercised on the



individual's own property, is entitled to as much protection as the right contended for by petitioners, that is, the right to engage in demonstrations in support of their beliefs, and particularly when they urge the maintenance of that right apart from where they have a lawful right to its exercise and to the complete abolition of the rights of others. It would seem particularly true when it is so obvious that the protection of the rights of the private businessman and property owner can be maintained without in any way denying the petitioners the full and public expression of their views.

With respect to the third proposition, we respectfully submit that for this Court to hold that a police officer must wait until violence occurs and cannot take action to prevent such violence, is to invite chaos and disorder in every community throughout our nation. The primary purpose of law enforcement agencies is to prevent disorder rather than to punish for the commission thereof. As was said in the case of *People v. Nixon*, 161 NE 463, at page 466;

"Police officers are guardians of the public order. Their duty is not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties, they may give reasonable directions."

And again, in the case of *People v. Calpern*, 181 NE 572 it was said:

"Failure, even though conscientious, to obey directions of a police officer, not exceeding his author-

ity, may interfere with the public order and lead to a breach of the peace."

There is also a very able discussion of whether a refusal to comply with directions given by a police officer could be held to be disorderly conduct in the case of *People v. Arko*, 199 N. Y. S. 402, in which the Court said at page 405:

"The case must present proof of some definite and unmistakeable behavior *which might stir if allowed to go unchecked, the public to anger or invite dispute, or bring about a condition of unrest and create a disturbance.*" (emphasis added)

In the recent case of *State of Maryland v. Dale H. Drews, et al*, decided May 6, 1960, Criminal No. 20084, (unreported) the court there was considering a situation almost identical to the situation in these three cases. In that case five persons, three white and two Negro, entered the Gwynn Oak Amusement Park in Baltimore County, a privately owned amusement park, and attempted to use its facilities. They were advised by employees of the owner that the facility was not open to members of the Negro race. The two Negroes were asked to leave and refused. Then the entire group, both white and Negro, were asked to leave and all refused. Thereafter, the Baltimore County police were called. The police requested the group of five persons to leave the park and they again refused. The period of time between the time of the initial request to leave and the time of actual arrest covered a period

of only ten or fifteen minutes. These five persons were charged with disturbing the peace. The court, after discussing the above referred to case, found that *"the facts and circumstances hereinbefore stated offer clear and convincing proof that public disorder reasonably could be expected to follow if the five persons remained in the park. The order of the police to leave, therefore, was not arbitrary. The refusal of the defendants to leave upon request of the police, under the circumstances described in the evidence, constituted acting in a disorderly manner to the disturbance of the public peace."* (emphasis added)

We respectfully submit that the principles of law followed there are applicable here and should be adopted by this court in the instant cases.

We respectfully submit that the principles of law involved herein have been long established in the history of our nation and need no further review by this Court. These defendants were convicted under a valid statute of the the State of Louisiana, designed to preserve peace and order in the community, applicable to all persons regardless of race or color, after due and proper judicial process in which defendants were given every opportunity to produce evidence, file motions, etc., and their convictions need no review by this Court.

Wherefore, for the foregoing reasons, it is respectfully submitted that the petitions for writ of certiorari in all three cases should be denied.

Respectfully submitted,

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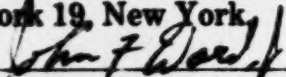
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**PROOF OF SERVICE**

I, John F. Ward, Jr., one of the Attorneys for the State of Louisiana, respondent herein, certify that on the 4th day of March 1961, I served copies of the foregoing Brief of the State of Louisiana in Opposition to Application for Writs of Certiorari to the Louisiana Supreme Court, by mailing the required number of copies, postage prepaid, to Counsel of Record for Petitioners, at the following addresses: A. P. Tureaud, 1821 Orleans Ave., New Orleans, Louisiana; Johnnie A. Jones, 530 South 13th St., Baton Rouge, Louisiana; Thurgood Marshall and Jack Greenberg, 10 Columbus Circle, New York 19, New York.

  
 JOHN F. WARD, JR.

✓ Counsel of Record  
 for Respondent

Sworn to and subscribed before me, the undersigned Notary Public, within and for the Parish of East Baton Rouge, State of Louisiana, this 4th day of March, 1961.

  
 Notary Public

MOTION FILED AUG 16 1961

CLERK  
SUPREME COURT, U. S.

IN THE  
**Supreme Court of the United States**  
October Term, 1961

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No. 26 — JOHN BURRELL GARNER *et al.*, *Petitioners*,  
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**On Writs of Certiorari to the Supreme Court of Louisiana**

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**MOTION FOR LEAVE TO FILE BRIEF  
AND BRIEF AMICUS CURIAE FOR THE COMMITTEE  
ON THE BILL OF RIGHTS OF THE ASSOCIATION OF  
THE BAR OF THE CITY OF NEW YORK**

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On Writs of Certiorari to the Supreme Court of Louisiana

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**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE  
FOR THE COMMITTEE ON THE BILL OF RIGHTS OF  
THE ASSOCIATION OF THE BAR OF THE  
CITY OF NEW YORK**

*To the Chief Justice and the Associate Justices of the  
Supreme Court of the United States:*

This motion of the Committee on the Bill of Rights of The Association of the Bar of the City of New York for leave to file the annexed brief *amicus curiae* is made pursuant to Rule 42, consent to the filing of a brief having been withheld by respondent.



The Association of the Bar of the City of New York, presently comprised of more than 7,000 lawyers admitted to practice in the State of New York, has since its organization in 1871 been active in expressing and implementing considered views on local, state and national matters affecting the law and the legal profession. These functions of the Association are generally performed through a committee responsible for the relevant subject-matter, acting by means of resolutions, reports, testimony before legislative committees and, on occasions when issues of paramount importance and special interest to the Bar are involved, as here, by participation as *amicus curiae* in pending litigation. The Association's Committee on the Bill of Rights is charged by the By-Laws of the Association with responsibility for matters relating to those provisions of the United States Constitution "which are directed at protecting the individual against oppression by government."

The grant of certiorari by the Court in these cases emphasizes the fact that they evoke questions of national significance considerably beyond the usual implications of local prosecutions of individuals for "disturbing the peace." Directly involved here is the question whether a State denies the equal protection of the laws, within the purview of the Fourteenth Amendment, by the arrest and conviction of persons (in these cases, Negroes) for peaceably seeking service of food on a non-discriminatory basis in commercial establishments open to the public. Although other questions and arguments are being advanced by petitioners, the Committee on the Bill of Rights believes—and has limited the annexed brief *amicus curiae* accordingly—that the decision of the Court should meet squarely the issue presented here of State enforcement of racial discrimination in such commercial establishments. If it does not do so, the present uncertainty as to the applicable law will continue to invite testing by persons on both sides of the issue, with resulting harm to the communities involved and to the Nation.

This Committee also considers that these cases raise fundamental questions concerning the judicial power and function. Courts traditionally are empowered to act where conflicts extend to an area of cognizable property rights. However, *Shelley v. Kraemer*, 334 U. S. 1 (1948), establishes that no organ of the State, and more particularly its judiciary, may serve as the instrument of constitutionally prohibited racial discrimination. An underlying issue here is whether the holding in *Shelley* should be departed from in these cases because they arise in a context of potential community tension. This committee of lawyers particularly concerned with effectuation of the protections of the Constitution for individual freedom has a concrete interest as *amicus curiae* in cases which thus appear likely at least to illumine, and perhaps to define, a vital aspect of the scope of the judicial function and power within the limitations of the Constitution.

WHEREFORE, it is respectfully prayed that this motion for leave to file the annexed brief *amicus curiae* be granted.

Respectfully submitted,

WILLIAM A. DELANO  
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MARTIN F. RICHMAN

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**On Writs of Certiorari to the Supreme Court of Louisiana**

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**BRIEF *AMICUS CURIAE***  
**FOR THE COMMITTEE ON THE BILL OF RIGHTS OF**  
**THE ASSOCIATION OF THE BAR OF THE**  
**CITY OF NEW YORK**

---

**Interest of *Amicus Curiae***

The interest of the Committee on the Bill of Rights of The Association of the Bar of the City of New York as *amicus curiae* and the reasons for submitting this brief are set forth in the annexed Motion for Leave to File Brief.

### Question Presented

This brief is addressed to the question whether a State denies the equal protection of the laws by arresting and convicting for disturbing the peace Negroes who peaceably seek service by remaining seated at a lunch counter located in a commercial establishment open to the public.

### Statement

These cases have been brought here on writs of certiorari to review convictions in a court of the State of Louisiana of persons who were arrested for disturbing the peace when they remained seated at public lunch counters located in commercial establishments after being refused food service because they were Negroes. These are the first cases to bring before the Court the issue of State enforcement of racial discrimination in the context of what have come to be known as "sit-ins." A statement of the facts relied on in the argument submitted in this brief of *amicus curiae* is presented here for the convenience of the Court, without intending to duplicate the statements of the facts of the individual cases set forth in the briefs of the parties.

In *Garner*, No. 26, the two petitioners are Negro men, college students in Baton Rouge, Louisiana (R. 8). They entered Sitman's Drug Store in downtown Baton Rouge on March 29, 1960, and sat down at the lunch counter (R. 30). The owner told them they could not be served, but one of them replied that they wanted coffee and both remained seated at the counter (R. 30). The policeman on the beat was in the store at the time and he, apparently without complaint from anyone else, called superior officers from headquarters (R. 31, 34-35). The latter advised petitioners that they were violating the "disturbing the peace"



law,<sup>1</sup> and requested them to leave (R. 35). Petitioners refused, and were arrested (R. 35-37).

The store owner testified that Negroes are served at the counters in the drug store section of his establishment—he said they “are very good customers” (R. 32)—but that he does not “have the facilities” for serving Negroes at the lunch counter in the adjoining coffee shop section (R. 31-32). One of the petitioners told the police officer he had purchased an umbrella in the store (R. 35). When petitioners entered, at the noon hour, there were white customers seated at the counter, but the owner could not recall how many (R. 33). No customers complained to him, he did not speak to the police officers, and no one else complained to them (R. 33, 34-35).

1. The police captain in his testimony referred to “Act 103” (R. 35). At the time of the events in question here, La. Rev. Stat. §14:103 (1950) provided:

“Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

- (1) Engaging in a fistic encounter; or
- (2) Using of any unnecessarily loud, offensive, or insulting language; or
- (3) Appearing in an intoxicated condition; or
- (4) Engaging in any act in a violent and tumultuous manner by three or more persons; or
- (5) Holding of an unlawful assembly; or
- (6) Interruption of any lawful assembly of people; or
- (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.”

Subsequently, the statutory definition of disturbing the peace was expanded to deal more specifically with, *inter alia*, conduct like that involved in the “sit-ins.” See La. Rev. Stat. §§14:103, 14:103.1 (Supp. 1960).

The police captain testified that he arrested petitioners because he believed they were disturbing the peace "by their mere presence" at the lunch counter (R. 35-36). Thus, he testified (R. 35):

"A. Well, the only thing that I can say is, the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested."

The trial court's oral finding of guilt was based on the fact that petitioners (R. 37)

"were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers arrived they informed these two accused that they would have to leave, and they refused to leave."

Petitioners were each sentenced to 30 days in the parish jail and to pay a fine of \$100 or serve an additional 90 days in jail (R. 41).

The petitioners in *Briscoe*, No. 27, five men and two women, also Negro college students in Baton Rouge (R. 8), entered the Greyhound Bus Station in Baton Rouge on March 29, 1960, took seats at the lunch counter, and started ordering (R. 30). A waitress told them they would have to go "to the other side" to be served (R. 30-31). The police were called, either by a bus driver or a woman employee (R. 33, 34, 38). The police asked petitioners to get up and leave (R. 35). They remained seated without speaking, but when placed under arrest went along peacefully with the officers (R. 35-36).

The Bus Station has another eating place for colored people (R. 32-34). The waitress testified that over the counter at which she refused to serve petitioners was a sign reading "Refuse service to anyone," and that her under-

standing of instructions from her superior was to refuse to serve Negroes (R. 32-33). Petitioners did nothing other than give their orders and continue to sit at the counter (R. 32-33, 35, 37), and the only reason the waitress refused to serve them was that they were Negroes (R. 31-32). There were no other people waiting to be served while petitioners were sitting at the counter (R. 34).

The police captain stated that petitioners were arrested for disturbing the peace by the "fact that their presence was there in the section reserved for white people" (R. 36). Thus, he testified (R. 38):

"Q. You requested them to move then because they were colored, is that right, sitting in those seats?

"A. We requested them to move because they were disturbing the peace.

"Q. In what way were they disturbing the peace?

"A. By the mere presence of their being there."

The trial court's finding of guilt was similar to that in the *Garner* case, which was tried on the same day (R. 38-39). All the petitioners here received the same sentence as those in *Garner*—30 days in jail and a fine of \$100 or an additional 90 days (R. 43-44).

Petitioners in *Hoston*, No. 28, are other Negro college students in Baton Rouge (R. 7), five men and two women. They entered the S. H. Kress and Company store in Baton Rouge about two o'clock on March 28, 1960 and sat down at seats at various places along the lunch counter (R. 29, 30). The manager told a waitress to advise them that they would be served at another counter, across the store, reserved for colored people (R. 29). Petitioners continued to sit, and the manager called the police (R. 30). The police officers asked petitioners to leave; one of them said she wanted a glass of iced tea, but the Chief of Police

told her "they were disturbing the peace and violating the law by sitting there" (R. 36). When petitioners did not move to get up, they were placed under arrest (R. 36).

The manager testified that "it isn't customary for the two races to sit together and eat together" at the lunch counter in the Kress store (R. 30, 34), but that it is customary for white and colored persons to shop together elsewhere in the store (R. 31-32). There were Negroes in the store at the time of this incident (R. 37). The manager stated that petitioners were not served at the lunch counter because it was "not customary" to serve Negroes there, and that petitioners did not do anything other than sit at the counter which he would consider disturbing the peace (R. 33).

The police captain also testified that petitioners did nothing other than sit at these counter seats that he considered disturbing the peace (R. 37). He arrested petitioners on instructions of the Chief of Police, who had accompanied him to the store (R. 36).

The finding of guilt by the trial court was similar to that in the two preceding cases, with which this one was tried (R. 38-39). The court noted that petitioners "remained seated at the counter which by custom had been reserved for white people" until arrested (R. 39). The jail sentences and fines of these petitioners were the same as in the other two cases (R. 43-44).

Convictions in the three cases were sustained by the Supreme Court of Louisiana in memorandum orders refusing writs with a statement that the rulings of law by the trial court "are not erroneous" (*Garner* R. 53, *Briscoe* R. 56, *Hosston* R. 55-56).

## Summary of Argument

Equal opportunity to purchase food in a place open to the public is protected by the Fourteenth Amendment against infringement by State action based on race or color. State courts may not, by civil or criminal sanctions, enforce discriminations originating in private conduct. Here the arrests and convictions brought "the full coercive power of government" (*Shelley v. Kraemer*, 334 U. S. 1, 19 (1948)) to bear in support of discriminatory refusals to serve petitioners at public lunch counters, for it is clear in the records of these cases that petitioners were arrested solely because they were Negroes peacefully attempting to be served.

The extent to which privately-owned property is affected by rights in others depends upon the extent to which the owner has opened the property for use by the public. Thus, State sanctions against the exercise of constitutional rights on privately-owned property open to the public and State-enforced segregation in privately-owned local transportation facilities have been held unconstitutional. In the present cases, statutes of general applicability have been applied to provide effective State participation in the enforcement of racial discriminations by store proprietors.

The Fourteenth Amendment requires that peaceful activities by Negroes seeking equal treatment in normal economic transactions in the circumstances presented here be immune from coercive sanctions interposed by the police or courts of a State. These cases involve nothing more. Reversal of the convictions will leave the private parties to the dispute over segregation at the lunch counters to work out a resolution of their differences by lawful means of persuasion and pressure, while affirmance would result in continued reliance upon police and court action to perpetuate discrimination in places open to the public.

## ARGUMENT

It is a denial of the equal protection of the laws for a State to arrest and convict for disturbing the peace Negroes who peaceably seek service by remaining seated at a lunch counter located in a commercial establishment open to the public.

Petitioners in each of these cases, Negro college students in Baton Rouge, Louisiana, were arrested when, seeking to be served food at public lunch counters located in stores and a bus terminal in that city, they remained seated at the lunch counters after being refused service on the sole ground that they were Negroes. Although no disturbance in fact occurred, petitioners were convicted and sentenced to jail for "disturbing the peace," defined by La. Rev. Stat. §14:103(7) (1950) as any act committed "in such a manner as to unreasonably disturb or alarm the public" (full text *supra* p. 3, note 1). For the reasons stated in the annexed Motion for Leave to File Brief, the Committee on the Bill of Rights of The Association of the Bar of the City of New York submits this brief as *amicus curiae* in support of the position that arrest and conviction of petitioners in these circumstances constituted State action enforcing discrimination based on race or color in the opportunity to purchase food at a place open to the public, and as such deprived petitioners of the equal protection of the laws in contravention of the Fourteenth Amendment.<sup>2</sup>

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2. Believing that the issue of State enforcement of racial discrimination in the circumstances presented in these cases is of nationwide public importance (see annexed Motion for Leave to File Brief), and that it is, moreover, in the context of the records of these cases the narrowest issue squarely presented, *amicus curiae* has limited this brief to discussion of that issue. This limitation is

It has been established that equal opportunity to purchase food in a place open to the public is a substantial personal and property right protected by the Fourteenth Amendment against infringement by State action based on race or color. *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961). Not only the opinion of the Court but each of the individual opinions in *Burton* is premised on this principle. See 365 U. S. at 721-22, 726-27, 727, 729. Indeed, the proposition "cannot be doubted," as the Court earlier said in relation to equal opportunity to purchase and occupy residential property. Thus, in *Shelley v. Kraemer*, 334 U. S. 1, 10-11 (1948), the Court said:

"It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil

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not intended to express any opinion as to other questions or arguments presented by the parties in their respective briefs.

There have been numerous convictions since February 1960 in various State courts on facts generally similar to those of the present cases. See, e.g., Petition for Certiorari, *Garner*, p. 28; Pollitt, "Dine Store Demonstrations: Events and Legal Problems of First Sixty Days," 1960 Duke L. J. 315. A number of petitions for certiorari have already been filed or may be expected to be filed this Term. Disposition of the present cases in favor of petitioners on the issue dealt with in this brief will govern at least *Avent v. North Carolina*, No. 85, and *Fox v. North Carolina*, No. 86, pending on petitions for writs of certiorari. Examination of the records in those cases reveals no significant distinction from the cases presently before the Court. In the North Carolina cases the arrests and convictions were under a criminal trespass provision, N. C. Gen. Stats. §14-134 (1953), rather than for disturbing the peace, but the position taken in this brief would apply to use of any criminal law sanction in similar circumstances.



rights and liberties which the Amendment was intended to guarantee."<sup>3</sup>

For as long as "State action" has been the touchstone of applicability of the Fourteenth Amendment, it has been accepted that discriminations originating with private conduct in which the State participates, or which are authorized or enforced by acts of the State, become subject thereby to the prohibition of the Amendment. See *Civil Rights Cases*, 109 U. S. 3, 11, 17, 24 (1883); *Shelley v. Kraemer*, *supra*; *Barrows v. Jackson*, 346 U. S. 249 (1953); *Burton v. Wilmington Parking Authority*, *supra*; cf. *Marsh v. Alabama*, 326 U. S. 501, 509 (1946); *NAACP v. Alabama*, 357 U. S. 449, 463 (1958).

Recognizing that courts have frequently been the organs of the State called upon to enforce discriminations originating in private conduct, this Court has held that State courts may not do so, either by civil or criminal sanctions. Thus, in *Shelley v. Kraemer*, *supra*, judicial enforcement by

3. The intention of the framers of the Fourteenth Amendment that Negroes have equal opportunities to exercise basic economic rights, free of discriminatory restrictions or prohibitions imposed or enforced by State action, was spelled out in Section 1 of the Civil Rights Act of 1866, 14 Stat. 27, the drafting and enactment of which occurred contemporaneously with the drafting and approval of the Fourteenth Amendment by the 39th Congress. The statute, whose text and history were set out in *Shelley* in support of the passage quoted *supra*, provides (as now codified in 42 U. S. C. §1982):

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The Court has held that the Amendment and this statute protect the same rights. *Hurd v. Hodge*, 334 U. S. 24, 30-33 (1948); *Shelley v. Kraemer*, *supra*; *Buchanan v. Warley*, 245 U. S. 60, 75-79 (1917). Moreover, it is apparent that the word "right" was used in the statute in a broad sense to proscribe all State action denying equality of legal privileges on account of race. Cf. *Takahashi v. Fish and Game Comm'n*, 334 U. S. 410, 419-20 (1948).

injunction of a restrictive covenant against occupancy of residential property by non-whites was held to violate the Fourteenth Amendment. Thereafter, *Barrows v. Jackson*, 346 U. S. 249 (1953), held that such a covenant could not be given indirect judicial enforcement by an action for damages against a white owner who sold property in breach of the restrictive covenant. In *Gayle v. Browder*, 352 U. S. 903 (1956), the Court nullified State and local criminal sanctions for the enforcement of segregation on privately-owned local buses.<sup>4</sup> A similar principle was applied earlier in *Marsh v. Alabama*, 326 U. S. 501 (1946), which invalidated application of a general criminal trespass law to persons exercising a constitutional right (there, distribution of religious literature) on the property of a privately-owned "company town" in opposition to the edict of the landowner.

The doctrine of these cases is most familiarly identified with *Shelley v. Kraemer*. The Court there stated that the protection of the Fourteenth Amendment is invoked when private discriminatory acts are carried out by "the active intervention of the state courts, supported by the full panoply of state power," and when the State has "made available to [private] individuals the full coercive power of government" to enforce such discrimination (334 U. S. at 19). In the present cases, the arrests of petitioners by local police officers, as well as their subsequent convictions for "disturbing the peace"—all avowedly based solely on

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4. The *per curiam* opinion of this Court, affirming *Browder v. Gayle*, 142 F. Supp. 707 (M. D. Ala. 1956), merely cited *Brown v. Board of Education*, 347 U. S. 483 (1954); *Baltimore v. Dawson*, 350 U. S. 877 (1955); and *Holmes v. Atlanta*, 350 U. S. 879 (1955), each of which had dealt with racial discrimination in facilities owned and operated by governmental entities. The local buses in *Gayle* were owned and operated by a business corporation. Thus the *Gayle* decision is direct authority that a State may not utilize its criminal-law sanctions to enforce discrimination in privately-owned facilities used by the public, as it could not with respect to governmental facilities used by the public. See also *infra* pp. 15-16.

their peaceful attempts to be served at public lunch counters (*Garner* R. 35-36, *Briscoe* R. 35-38, *Hoston* R. 37; see *supra* pp. 4, 5, 6)—brought to bear in support of the discriminatory refusals to serve them “the full coercive power of government.”

The participation of the State is emphasized in these cases by the fact that, although in two of them the police were called by the manager or an employee, it appears that in each case the arrests were made on the initiative of the police, without direct request by the person in charge of the lunch counter (*Garner* R. 31, 34-37, *Briscoe* R. 33, 34-38, *Hoston* R. 30, 36). In any event, the individual in charge had no right to seek the support of the police to enforce racial discrimination in these public places. As the Court said in *Shelley v. Kraemer*, *supra*, 334 U. S. at 22:

“The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals.”

Petitioners peaceably sought service by remaining seated at these lunch counters, located in stores open to the public and where white persons would be served who sat down in the same fashion (*Garner* R. 32, *Briscoe* R. 31-32, *Hoston* R. 30). Their arrests and convictions under these circumstances provided support for the private owners' segregation rules through State action of the most direct sort, combining the coercive force of the police with the ultimate sanction of the judicial arm of the State.<sup>5</sup>

5. It is, of course, immaterial to the issue of Fourteenth Amendment violation whether the police or the courts act under a statute expressing the aim of enforcing discrimination in privately-owned facilities (*Buchanan v. Warley*, 245 U. S. 60 (1917); *Gayle v. Browder*, 352 U. S. 903 (1956)), or act to enforce such discrimination under a statute of general applicability (*Boman v. Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960); cf. *Marsh v. Alabama*,

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Application of the principles outlined above to these cases is not precluded by the fact that the discriminatory conduct being enforced by the State is that of the proprietors of privately-owned commercial establishments. The Court has recognized that the extent to which a property owner is affected by rights in others depends upon the extent to which he himself, "for his advantage, opens up his property for use by the public in general." *Marsh v. Alabama*, 326 U. S. 501, 506 (1946). There the Court stated:

"Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

*Marsh* decided that sidewalks in the business block of a "company town" were as open for free-speech purposes as those of municipalities. Subsequently, lower courts have made analogous rulings rejecting trespass charges in criminal and civil cases involving picketing on the sidewalks of privately-owned shopping centers. *E.g.*, *State v.*

326 U. S. 501 (1946)), or, indeed, act to enforce such discrimination without relying on statutory authority (*Shelley v. Kraemer*, 334 U. S. 1, 14-18 (1948); *Baldwin v. Morgan*, 287 F. 2d 750, 756-60 (5th Cir. 1961)). For "State action of every kind \* \* \* which denies \* \* \* the equal protection of the laws" is proscribed by the Amendment. *Civil Rights Cases*, 109 U. S. 3, 11 (1883) (Emphasis added).

6. The Court reiterated this theme in *Shelley v. Kraemer*, 334 U. S. 1, 22 (1948):

"And it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. Cf. *Marsh v. Alabama*, 326 U. S. 501 (1946)."

*Williams*, 44 Lab. Rel. Ref. Man. 2357, 2360-62 (Baltimore Crim. Ct. 1959); *Freeman v. Retail Clerks Union*, 45 Lab. Rel. Ref. Man. 2334, 2342 (Wash. Super. Ct. 1959). In one such case, a court in Raleigh, North Carolina, relying on *Marsh*, dismissed trespass charges against Negroes who were protesting segregated lunch counters in the stores of a shopping center by demonstrating on its privately-owned sidewalks. See *New York Times*, April 23, 1960, p. 21, col. 1; Pollitt, *supra* note 2, at 350 n.206. Similarly, picketing within New York's Pennsylvania Station, directed against a news stand located in a public concourse there, has been held, partly on the authority of *Marsh*, to be immune from prosecution as disorderly conduct (under a definition similar to that of disturbing the peace in the statute involved here). *People v. Barisi*, 193 Misc. 934, 86 N. Y. S. 2d 277 (Magis. Ct. 1948).

Each of the cases described dealt with a privately-owned sidewalk or concourse maintained by the owner for access by the public to places of business. Here it is such places of business, open to traffic and trade by the public, that are in question. The stores and bus terminal involved here, like the locations dealt with in *Marsh* and the cases following it, have been opened up by the proprietors for use by the public (*Garner* R. 32, *Briscoe* R. 32-34, *Hoston* R. 31-32, 37; see *supra* pp. 3, 4, 6). State enforcement of racial discrimination therein by criminal sanctions is therefore offensive to the prohibition of the Fourteenth Amendment.<sup>7</sup>

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7. No special challenge to the traditional right or power of a merchant to select his customers individually is presented by these cases. Enforcement of that principle has never been absolute. Like any economic power or property right, it is bounded by limitations drawn from superior legal sources, including the Constitution. See *Shelley v. Kraemer*, 334 U. S. 1, 22 (1948), *supra* note 6; cf., e.g., *United States v. Parké, Davis & Co.*, 362 U. S. 29 (1960); *California Inter-Insurance Bureau v. Maloney*, 341 U. S. 105 (1951).

In similar factual circumstances involving segregation on privately-owned local buses, governmental enforcement of segregated-seating rules originating with the private owner has been held to violate the Fourteenth Amendment. *Gayle v. Browder*, 352 U. S. 903 (1956), see *supra* note 4; *Flemming v. South Car. Elec. & Gas Co.*, 239 F. 2d 277 (4th Cir. 1956); *Boman v. Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960).

In a decision affirmed by this Court, a three-judge District Court said, citing *Shelley v. Kraemer*, that enforcement of the bus company's rules by the police and courts raises the difference, "a constitutional difference, between voluntary adherence to custom and the perpetuation and enforcement of that custom by law." *Browder v. Gayle*, 142 F. Supp. 707, 715 (M. D. Ala. 1956), *affirmed*, *Gayle v. Browder*, *supra*. A ruling to the same effect was made by the Fifth Circuit in the *Boman* case, *supra*, which quoted the District Judge's comment that "the police officers were without legal right to direct where they [Negroes who refused to move to the rear of a bus, or to leave it when the driver took it to the barn upon their refusal] should sit because of their color. The seating arrangement was a matter between the Negroes and the Transit Company."<sup>8</sup>

8. 280 F. 2d at 533 n.1. The entire discussion of this point by District Judge Grooms is illuminating in relation to the facts of the present cases. As quoted by the Court of Appeals, *ibid.*, it reads:

"A charge of 'a breach of the peace' is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law.

"Under the undisputed evidence, plaintiffs acted in a peaceful manner at all times and were in peaceful possession of the seats which they had taken on boarding the bus. Such being



Each of the bus cases just discussed held that police and court enforcement of the private owner's rule of segregated seating in local buses is unconstitutional, without reference to the affirmative statutory requirement of non-discrimination that exists with respect to facilities of interstate travel. Cf., e.g., *Boynton v. Virginia*, 364 U. S. 454 (1960). Similarly, the Fifth Circuit has recently held to be unconstitutional discriminatory police action regarding use of the "white" waiting room in a railroad station by Negroes other than interstate travelers. In *Baldwin v. Morgan*, 287 F. 2d 750 (5th Cir. 1961), injunctive relief was granted against a local police practice of checking Negroes found in the "white" waiting room to see if they held interstate tickets. The Court of Appeals ruled that, since *Gayle v. Browder*, *supra*, "it is too late now to question the absolute right of Negroes engaged in intrastate commerce to be free from discrimination by police officers on the basis of race" (287 F. 2d at 758-59) (Emphasis added).<sup>9</sup>

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the case, the police officers were without legal right to direct where they should sit because of their color. The seating arrangement was a matter between the Negroes and the Transit Company. It is evident that the arrests at the barn were based on the refusal of the plaintiffs to comply with the request to move since those who did move, though equally involved except as to compliance, were not arrested.

"Under the facts in this case, the officers violated the civil rights of the plaintiffs in arresting and imprisoning them. Ordinance 1487-F, and their 'willful' refusal to move when directed to do so, did not authorize or justify their conduct."

The full opinion of the District Judge is reported *sub nom. Boman v. Morgan*, 4 Race Rel. L. Rep. 1027 (N. D. Ala. 1959).

9. This part of the Fifth Circuit's decision was based upon evidence that such discriminatory police action had in fact occurred, independent of a State Public Service Commission rule requiring segregated waiting rooms, which was invalidated elsewhere in the opinion (*compare* 287 F. 2d at 756-60 *with id.* at 753-56).



It is clear in the records of all of the present cases that petitioners were arrested solely because they were Negroes seeking to be served at these public lunch counters. (*Garner* R. 35-36, *Briscoe* R. 35-38, *Hoston* R. 37; see *supra* pp. 4, 5, 6). The trial court's oral findings of guilt were explicitly placed on that basis (*Garner* R. 37, *Briscoe* R. 38-39, *Hoston* R. 39), and were sustained by the Supreme Court of Louisiana in memorandum orders (see *supra* p. 6). Thus, the highest court of the State has, in effect, construed a criminal statute of general applicability "as authorizing discriminatory classification based exclusively on color" by the proprietors of these stores. *Burton v. Wilmington Parking Authority*, 365 U. S. 715, 727 (1961) (opinion of Stewart, J.); *id.* at 729 (opinion of Harlan, J., joined by Whittaker, J.); *cf. id.* at 727 (opinion of Frankfurter, J.).

The proprietors' discriminatory rules were given forceful effect by the totality of police and judicial actions in these cases. Though the element of governmental property which the majority of the Court found controlling in *Burton* is not involved here, the significant effect of the State enforcement actions in these cases "indicates that degree of state participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn." *Id.* at 724 (opinion of the Court).

### III

The traditional considerations for limiting constitutional adjudication to the facts of actual cases before the Court are compelling in the sensitive area of race relations, and particularly so where the claim to freedom from State-enforced racial discrimination is opposed by a claim to freedom in the management of private property. The judicial precedents discussed in this brief indicate that

the resolution of such conflicting claims may vary with the circumstances. Thus the decision of the Court in the present cases need not be taken as having decided issues not presented in those cases on their own facts. It seems appropriate, therefore, to note in summary form some matters *not* involved in the facts of the present cases:

(1) The issue of affirmative remedies against discriminatory acts does not arise in these criminal cases. The question here is simply whether peaceful activities by Negroes seeking equal treatment in normal economic transactions are immune from criminal sanctions interposed against them by the police or courts of a State or local government.

(2) Decision here need not establish the extent to which privately-owned property may be used for purposes not intended by the owner, for in the cases now before the Court petitioners merely attempted to use the lunch counter facilities of these stores in the manner in which they were intended to be used—by sitting down at the counter and ordering food or beverages.<sup>10</sup>

(3) Nor do these cases present for decision any issue as to discriminatory exclusion from places affected with a countervailing right of privacy on the part of the property owner, such as a private home. Cf. *Breard v. Alexandria*, 341 U. S. 622, 641-45 (1951).

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10. That petitioners' motives may have included a desire to protest or demonstrate against the discriminatory practices in question is immaterial, for their convictions had to be, and were, based on their overt actions, and the form petitioners' protest or demonstration took was merely seeking service in the normal manner.

The convictions cannot be sustained upon petitioners' refusals to leave the premises upon orders of the police. Such refusals cannot be deemed criminal in circumstances in which the police had no right, under the Constitution, to demand that petitioners leave the premises. Cf., e.g., *Boynton v. Virginia*, 364 U. S. 454 (1960); *id.* at 464-65 (dissenting opinion); *Boman v. Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960), *supra* p. 15 and note 8.

Only commercial facilities open to traffic and trade by the public are involved in the present cases.

(4) The use of force by a store proprietor as an alternative to police action in seeking to remove Negroes seeking service is not involved. There is nothing in the records of these cases to indicate that forceful removal was even contemplated.<sup>11</sup>

(5) Nor is there any showing here that petitioners' conduct did, or in the absence of action by the police would, provoke violence or disorder by persons other than the proprietor.<sup>12</sup> In any event, that others may respond with disorder to peaceable activities in pursuit of equal treatment should not permit State or local authorities to stave off possible disorder by sanctions against the persons peacefully seeking such treatment. *Cf. Cooper v. Aaron*, 358 U. S. 1, 16 (1958).

All that these cases involve is the question whether Negroes shall be free of "the full coercive power of gov-

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11. Therefore, it is not necessary here to consider whether constitutional compusions may affect causes of action and defenses in cases involving such forceful removal. As to that, see Schwelb, "The Sit-In Demonstration: Criminal Trespass or Constitutional Right?" 36 N. Y. U. L. Rev. 779, 800-08 (1961).

12. The incidents of violence against the "Freedom Riders" earlier this year cannot reasonably be deemed a pragmatic argument against recognition here of the right to be free of State-enforced segregation in the new context of lunch counters. Those isolated incidents of violence did not occur in response to any ruling marking a new advance against discrimination, but on the occasion of a highly-publicized exercise of a right long established. See, e.g., *Morgan v. Virginia*, 328 U. S. 373 (1946).

There is evidence that in many Southern communities peaceful resolution of the struggle sparked by the "sit-ins," with elimination or reduction of discrimination at the lunch counters, has occurred. See, e.g., *New York Times*, June 6, 1960, p. 1, col. 2; June 24, 1960, p. 1, col. 6; July 25, 1960, p. 1, col. 8; August 11, 1960, p. 14, col. 5; October 18, 1960, p. 47, col. 5; January 22, 1961, p. 72, col. 8; May 7, 1961, §4, p. 10, col. 1.

ernment" (*Shelley v. Kraemer*, 334 U. S. 1, 19 (1948)) against their efforts to seek equality of service in the purchase of food in commercial establishments. The effect of a decision reversing these convictions will be to leave the private parties to the dispute over segregation at these lunch counters—the merchants and Negro residents of the community—to work out a resolution by lawful means of persuasion and pressure. This is the necessary result of the Fourteenth Amendment's bar to State enforcement of discrimination, as in other instances where the Court has ruled that judicial sanctions may not be interposed in economic or social struggles between contending forces of private interests. *Cf. Thornhill v. Alabama*, 310 U. S. 88 (1940); *San Diego Bldg. Trades Council v. Garmon*, 359 U. S. 236 (1959).

On the other hand, affirmance of the decision below would offer little inducement to the merchants to work toward a peaceful resolution of the dispute raised by the claim of Negro residents of the community for equal treatment. Instead, police and court action would continue to be relied upon to perpetuate discriminatory practices in places open to the public. Such action the Fourteenth Amendment forbids the States to take.

## CONCLUSION

**For the foregoing reasons, the judgments below should be reversed.**

Respectfully submitted,

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**SUPREME COURT. U. S.**

Office-Supreme Court, U.S.

**FILED**

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**SEBASTIAN CROWNING, Clerk**

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1961

No. 26

JOHN BURRELL GARNER, *et al.*, *Petitioners,*

—v.—

STATE OF LOUISIANA, *Respondent.*

No. 27

MARY BRISCOE, *et al.*, *Petitioners,*

—v.—

STATE OF LOUISIANA, *Respondent.*

No. 28

JANNETTE HOSTON, *et al.*, *Petitioners,*

—v.—

STATE OF LOUISIANA, *Respondent.*

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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ON WRITS OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

**BRIEF FOR PETITIONERS**

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**Opinions Below**

The brief opinions rendered in these cases by the Supreme Court of Louisiana, refusing petitioners' applications

for writs of certiorari, mandamus and prohibition, and finding no error in the rulings of law by the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, are not reported. These identical opinions are set out in each printed record (R. Garner 53; R. Briscoe 56; R. Hoston 55).

The "Findings of Guilt" by the Nineteenth Judicial District Court in the respective cases also appear in the printed records (R. Garner 37; R. Briscoe 38-39; R. Hoston 38-39).

### **Jurisdiction**

The judgments of the Supreme Court of Louisiana in these cases were rendered on October 5, 1960. On March 20, 1961, this Court granted petitions for writs of certiorari to the Supreme Court of Louisiana, and ordered these cases consolidated for argument. The jurisdiction of this Court rests on 28 U. S. C. §1257(3).

### **Constitutional and Statutory Provisions Involved**

1. The Fourteenth Amendment to the Constitution of the United States.

2. The Louisiana statutory provision involved is LSA-R.S. 14:103:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

- (1) Engaging in a fistie encounter; or
- (2) Using of any unnecessarily loud, offensive, or insulting language; or
- (3) Appearing in an intoxicated condition; or

- (4) Engaging in any act in a violent and tumultuous manner by three or more persons; or
- (5) Holding of an unlawful assembly; or
- (6) Interruption of any lawful assembly of people; or
- (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both."

### **Questions Presented**

#### **1.**

Whether conviction of petitioners for disturbing the peace, on the ground that their mere presence at counters reserved by custom for whites constitutes in itself such an offense, amounts to an unconstitutional enforcement of racial segregation by state power.

#### **2.**

Whether conviction of petitioners of disturbance of the peace, on records barren of evidence of present or threatened disturbance, deprived them of due process of law, in that they were convicted of a crime without evidence of guilt.

#### **3.**

Whether the application to petitioners of a statute setting highly vague standards of guilt deprived them of liberty without due process.

#### **4.**

Whether petitioners' constitutionally protected right to free expression was violated by the application to them of

the disturbance of the peace statute, under the circumstances of this case.

### **Statement**

On March 29, 1960, petitioners in *Garner* (No. 26) entered Sitman's Drug Store, an establishment in Baton Rouge which served Negroes without discrimination at the counters in the drug store section and considered them "very good customers" (R. Garner 30, 32). They seated themselves at the lunch counter and one of them ordered coffee (R. Garner 30). The owner refused to serve them, but he neither requested them to move nor did he call the police (R. Garner 30-31). They were arrested by Captain Weiner (R. Garner 34), the arresting officer in all of these cases (see also R. Briscoe 34; R. Hoston 35). He had been summoned by the police officer on the beat (R. Garner 34), who made the call on his own initiative, without having received a complaint from any civilian (R. Garner 34-35). The arrests were made because petitioners "were sitting at a counter reserved for white people" and their "mere presence" there constituted a disturbance of the peace (R. Garner 35, 36).

In the *Briscoe* case (No. 27) petitioners sought service at a lunch counter at the Greyhound Bus Station in Baton Rouge on March 29, 1960 (R. Briscoe 30). The waitress told them "they would have to go on the other side to be served": "colored people are supposed to be on the other side" (R. Briscoe 30). When they "just kept sitting there" (R. Briscoe 31), and they "didn't do anything else" (R. Briscoe 33), a bus driver or "some woman" called the police department (R. Briscoe 33, 34). Captain Weiner responded to the call and "saw these people sitting at the lunch counter" (R. Briscoe 34). Forthwith, without having any conversation with the proprietors or employees, he asked these "stu-

dents" to move (R. Briscoe 36) and, when they didn't take this "opportunity to get up and leave" or "say anything" (R. Briscoe 35), he placed them under arrest because "They were disturbing the peace by the mere presence of their being there ['in the section reserved for white people' (R. Briscoe 36)]" (R. Briscoe 38).

Petitioners in the *Hoston* case (No. 28), on March 28, 1960, seated themselves as customers at a lunch counter at the S. H. Kress & Company in Baton Rouge (R. Hoston 29), a store which customarily allowed all white and colored customers to "make other purchases [save food] at the same counters at the same time" (R. Hoston 31). No signs indicated this, but the existence of this "custom" was communicated somehow to petitioners and other Negro students or customers by waitresses and stewards (R. Hoston 32). On this occasion, the waitress did not ask them to move, nor were they distinctly refused service; rather they were "offer[ed] service at the counter across the aisle" (R. Hoston 29, 32, 34). When petitioners "continued to sit", the store manager "advised the police department that they were seated at the counter reserved for whites, and within a short time the officers [Captain Weiner and Chief Arrighi (R. Hoston 35-36)] came in . . . and spoke to some of them" (R. Hoston 30). The officers "asked them to leave . . . the lunch counter reserved to white people. One of the [petitioners] said something about wanting to get a glass of tea but she was told they were disturbing the peace ['by sitting there' (R. Hoston 37)] and asked to leave again, and when none of them made a move to get up and leave Chief Arrighi told [Captain Weiner] to place them under arrest" (R. Hoston 36).

In each of these three cases, the information filed against petitioners indicated their race by adding "CM" or "CF" after their names (R. Garner 2; R. Briscoe 2; R. Hoston 2)



and charged that they "feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat . . . after being requested to do so by the agent of [the establishment]; said conduct being in such a manner as to unreasonably and foreseeably disturb the public . . ." (R. Garner 1; R. Briscoe 1; R. Hoston 1).

Thereafter, following denials of their motions to quash and applications for writs of certiorari, mandamus and prohibition to review the denials of said motions (R. Garner 11-12, 25; R. Briscoe 11-12, 25; R. Hoston 10-11, 24), petitioners were tried and convicted in the Nineteenth Judicial District Court on June 2, 1960 (R. Garner 29, 37, 38; R. Briscoe 29, 38-39, 40-41; R. Hoston 28, 38-39, 40). On July 5, 1960, the trial court overruled petitioners' motions for new trials and sentenced each of them to 30 days in jail and to pay a fine of \$100.00 and costs, or, in default of payment thereof, to 90 days in jail, with both parts of the jail sentence to run consecutively in the event of non-payment of the fine and costs (R. Garner 41-42; R. Briscoe 43-44; R. Hoston 43-44). Timely applications for a writ of certiorari, mandamus and prohibition made to the Supreme Court of Louisiana, inviting its supervisory jurisdiction to review the judgments and sentences entered against petitioners by the trial court, were refused in an opinion and judgment filed on October 5, 1960 (R. Garner 53; R. Briscoe 56; R. Hoston 55-56). At each stage of the proceedings in the Nineteenth Judicial District Court and the Supreme Court of Louisiana, petitioners objected to the criminal prosecutions on the ground that the same deprived them of privileges, immunities and liberties without due process of law as well as the equal protection of the laws under the Fourteenth Amendment to the Federal Constitution (R. Garner 7, 14, 17, 23, 40, 43, 45-46, 51; R. Briscoe 8, 14, 16-17, 23,

42, 45, 47-48, 53-54; R. Hoston 7, 13, 15-16, 22, 42, 45, 47-48, 53-54). These constitutional objections, however, as afore-shown, were rejected at all stages of the litigations.

### **Summary of Argument**

#### **A.**

These records show clearly that petitioners were convicted of not observing the custom of segregation. A change in name cannot make such a conviction less obnoxious to the equal protection clause of the Fourteenth Amendment. "State action" is present, both through police and court action and because the nominally "private" segregation that was in the background of these cases was followed in obedience to statewide custom which, for decades and continuously to the present, has been supported by official state law and policy.

#### **B.**

These petitioners were convicted of "disturbing the peace". But the records decisively establish that no disturbance of the peace either took place or was threatened, and that the actions of petitioners were in every respect decent and orderly. The only "disturbance" shown was the bare presence of petitioners in a place where Negroes were not "supposed" to be. Unless, therefore, the showing of this "presence" alone be held to support a finding of disturbance (and in that event Point A, *supra*, is clearly applicable), the petitioners have been convicted without any evidence of criminality—the most elementary denial of due process.

#### **C.**

The statute under which petitioners were convicted is too vague to set any standard for the guidance of persons sub-

ject to it, or of officials. Nothing in its history or in state judicial constructions clears up its ambiguities. It therefore fails to meet one of the most fundamental requirements of due process.

#### D.

The primary function of petitioners' conduct was that of expressing belief and of claiming what they conceived to be fair treatment. Such an expression enjoys federal constitutional protection. The state has infringed this right to free expression by punishing petitioners solely because of its exercise, without any valid state interest in such repression.

### ARGUMENT

**A. Petitioners were convicted on the theory that their failure to obey the custom of segregation was itself unlawful; their convictions therefore clearly contravene the decisions of this Court that racial segregation, enforced by state authority, violates the Fourteenth Amendment.**

**(1) Enforcement of segregation in these cases was both formally and substantially by "state action".**

These cases on their own records present a very simple situation. Beyond doubt, Louisiana cannot make it a crime for a Negro to seek service at a counter reserved by custom for whites, for such a law is simply and solely a state law commanding segregation. *Gayle v. Browder*, 352 U. S. 903; *New Orleans City Park Improvement Assn. v. Detiege*, 358 U. S. 54; *Holmes v. City of Atlanta*, 350 U. S. 879. But that is exactly what Louisiana has done in these cases. Very little skill in algebra is required to reach the conclusion that a law making a given action a "disturbance of the

peace", and then punishing this "disturbance of the peace", is the very same thing as a law punishing the same action under a more ingenuous nomenclature.

In each of these cases, the police and the state courts proceeded to arrest and conviction on the clear theory that the mere presence of a Negro at a "white" counter was unlawful in itself. This is enough to vitiate the convictions, though petitioners will shortly show (Point A(2), *infra*) that the same result must follow even if full account be taken of the nominally "private" segregation followed by the proprietors of the establishments concerned.

In the *Hoston* case (No. 28), the petitioners were charged with a disturbance of the peace "in that they refused to move from a cafe counter seat at Kress' Store . . . after having been ordered to do so by the agent of Kress' Store; . . ." But the transcript of testimony unequivocally and clearly shows, on the State's own testimony, that no such order was ever given. Mathews, the store manager, testified for the State on direct, that the petitioners sat next to him at the "white" counter, that they were denied service there, and were told they would be served at the "colored" counter. Then he testified as follows:

Q. Were they requested to move over to the counter reserved for colored people? A. No, sir.

Q. They weren't asked to go over there? A. They were advised that we would serve them over there (R. *Hoston* 29).

And again, on cross:

A. As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store (R. *Hoston* 33).

This is careful testimony; in the absence of anything tending to weaken it, it leaves it very clear that this manager followed a compromise course. He did not serve these petitioners, but did not tell them to move. The trial court, summing up this witness' testimony, shows clear appreciation of this distinction. Again on cross, the following was said:

**Q.** Then why did you ask these defendants to move from this cafe counter?

**The Court:** I think he hasn't testified to that. He said he advised them that they would be served elsewhere, over at the other counter. He said he did not refuse to serve them at this particular counter. What he did was, he advised them they would be served over at the other counter. . . . (R. Hoston 34)

When Capt. Weiner of the Baton Rouge City Police took the stand, the nature of the offense came clear. On direct:

**A.** Chief Arrighi and I had gone to the store and we entered the store from the Main Street entrance which was the closest to the lunch counter, and we noticed several of these people sitting at the counter. Chief Arrighi proceeded to the counter where they were sitting and asked them to leave.

**Q.** What counter were they seated at? **A.** They were seated at the lunch counter reserved for the white people. One of the defendants said something about wanting to get a glass of ice tea but she was told they were disturbing the peace and violating the law by sitting there and asked to leave again, and when none of them made a move to get up and leave Chief Arrighi told me to place them under arrest (R. Hoston 36).

And again on cross:

Q. Do I take by that that they hadn't done anything other than sit at these particular cafe counter seats that you consider disturbing the peace? A. That's the only thing that I saw happen.

• • • • •

Q. How were they disturbing the peace? A. By sitting there.

Q. By sitting there? A. That's right.

• • • • •

Q. It is your testimony their mere sitting there was disturbing the peace, is that right sir? A. That's right.

Q. And that is because they were members of the negro race? A. That was because that place was reserved for white people (R. Hoston 37).

In its statement accompanying the finding of guilty, the trial court showed its clear appreciation of the nature of the offense:

The Court: . . . they took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself,

their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, . . . (R. Hoston 38, 39)

Here, then, is the *Hoston* case: Petitioners, Negroes, were seated at a counter customarily frequented by whites. No private person told them to move or to leave. A policeman entered and told them to leave, on the ground that, *merely by being at the white counter*, they were "disturbing the peace." They remained, and were arrested and convicted of disturbance of the peace, on the ground, stated by the trial court, "that the *act in itself*, their sitting there and refusing to leave when requested to [by a policeman]" was such disturbance. (Emphasis supplied.)

This is simple and pure segregation by state power in the most classic sense, and it is nothing else. The state, acting throughout by its own formal agents, has ordained that it is a crime for a Negro to sit at a "white" counter, and then has tried the petitioners for that very crime, and convicted them.

The *Garner* case (No. 26) is similar. The information charged a disturbance of the peace, in that petitioners "refused to move from a cafe counter seat at Sitman's Drug Store . . . after having been ordered to do so by the agent of Sitman's Drug Store." Again, the record affirmatively shows, on the State's own uncontradicted testimony, that no such order was given. Willis, the drug store owner, testified:

Q. Go ahead. A. They occupied two seats and their presence there caused me to approach them a short time later and advise them that we couldn't serve them, and I believe after that the police came and arrested them and took them away.

[fol. 39] Q. Now, when you advised them you couldn't



serve them did they get up and leave or,— A. No, one asked for coffee,—said they just wanted coffee.

Q. That was after you told them you couldn't serve them? A. *That was the conversation they had with me.* I told them we couldn't serve them and one of the boys said he wanted some coffee (R. Garner 30). (Emphasis supplied.)

Willis did not call the police, but Captain Weiner was summoned, as he testified on direct for the State:

Q. Tell the Court exactly what was done? A. Well, I received a call at police headquarters from the officer on the beat, Officer Larsen. He told me that there were two negroes sitting at the lunch counter at Sitman's Drug Store. I told him to just stand by until we arrived at the scene. Major Bauer approached them and told them that they were violating the law by sitting there and asked them to leave. One of them mentioned something about an umbrella that he had bought and he couldn't see why he couldn't sit at the lunch counter. He told them again that they were violating the law and when they didn't make any effort to leave we placed them under arrest and brought them to police headquarters.

Q. Did you see Mr. Willis over there? A. No, I didn't see Mr. Willis. I'm assuming Mr. Willis is the manager, but we didn't talk to anyone in the place other than the two defendants (R. Garner 34).

The reason for the warning and arrest appears clearly in Weiner's testimony on cross:

Q. And when you arrived on the scene you saw these defendants sitting at this lunch counter? A. That's right.

Q. And based upon what you call a violation of the law you arrested them, is that correct? A. That's right (R. Garner 35).

. . . . .

Q. Is it a fact that they were negroes that you arrested them? A. The fact that they were violating the law.

Q. In what way were they violating the law? A. By the fact that they were sitting at a counter that was reserved for white people.

. . . . .

Q. . . . Do you know positively that there is such a law? A. The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103.

. . . . .

*By Counsel Jones:*

Q. The mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law, is that what you are saying? A. That's right, yes (R. Garner 35, 36).

Again, the trial court, in its remarks accompanying the finding of guilt, shows clear appreciation of the fact that the culpability of the petitioners had to rest on their mere failure to observe the custom of segregation:

. . . these two accused were in this place of business on the date alleged in the bill of information, and they were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers [fol. 47] arrived they informed these two accused that they would

have to leave, and they refused to leave. Whereupon, the officers placed them under arrest for violating the law, specifically Title 14, Section 103, subsection 7. The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public (R. Garner 37).

This, again, is segregation by state power simpliciter, with only a change of name.

In the *Briscoe* case (No. 27), based on events occurring in the Greyhound Bus Station in Baton Rouge, the waitress who dealt with petitioners repeatedly testified, when not led, that what she told petitioners was that they would not be served unless they went over to the other side. On direct:

Q. All right. Tell the judge what happened. A. They came in there and they sit down on the front seven seats and they start ordering and I told them they would have to go to the other side to be served.

[fol. 39] Q. Why did you tell them that? A. Because we are supposed to refuse the service of anyone that is not supposed to be on that side (R. Briscoe 30).

This account of what she said is twice repeated (R. Briscoe 31, 33).

It is true that, in response to leading questions, this witness adopted, by short affirmative answers, a different mode of describing this same conversation, the tenor of which she had already given in her own words. On direct:

Q. And you told them you couldn't serve them and asked them to move, is that correct? A. Yes, sir.

[fol. 40] Q. And when they refused to move you called the officers? A. Yes, sir (R. Briscoe 31).

And on cross:

Q. Miss Fletcher, is that the only reason you asked them to leave is because they were Negroes? A. Yes, sir (R. Briscoe 31).

But it is evident that she is referring to the same utterance, which she thrice describes in her own words as a statement to petitioners that "they would have to go to the other side to be served." This is not an order to leave, or indeed to do anything.

When Captain Weiner enters, the true nature of the complaint against these petitioners comes clear. Succinctly:

*By Counselor Jones:*

Q. You requested them to move then because they were colored, is that right, sitting in those seats? A. We requested them to move because they were disturbing the peace.

Q. In what way were they disturbing the peace? A. *By the mere presence of their being there* (R. Briscoe 38). (Emphasis supplied.)

In this case, the trial court, in its "Finding", predicated guilt both upon the waitress' "request" that the petitioners "leave" (cf. the analysis of her testimony, above) and the police request of the same tenor. These ingredients are intermixed in indeterminable proportions. This Court may independently evaluate the waitress' testimony as support for the trial court's finding of a "request" on her part. *Norris v. Alabama*, 294 U. S. 587, *Napue v. Illinois*, 360 U. S. 264, 272. But even if such a "request" be granted, and given the force of an order, it remains unquestionable that,

on the trial court's own statement, an ingredient<sup>1</sup> in the guilt of these petitioners was their sitting at a "white" counter after the agents of the State had determined that they were not to sit at the "white" counter—pure segregation by state power.

The record shows no consequential relation between the waitress' "request to leave" (if that was ever given), and the parallel request on the part of the police. Captain Weiner testified:—

Q. Officer, you testified that they were seated at this cafe counter seat in the section or the side that was reserved for white, is that correct? A. That's right.

Q. Now, how did you know that this particular side in which they were sitting was reserved for whites? A. Well, it is pretty obvious from the people there.

• • • • •

Q. Why did you arrest them, officer? A. Because according to the law, in my opinion, they were disturbing the peace.

• • • • •

Q. What was your answer to that officer? A. That in my opinion they were disturbing the peace.

Q. Within your opinion. Explain your opinion. A. The fact that their presence was there in the section

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<sup>1</sup> "[I]f one of the grounds for conviction is invalid under the Federal Constitution, the conviction cannot be sustained." *Williams v. North Carolina*, 317 U. S. 287, 292. *Stromberg v. California*, 283 U. S. 359, 370. The trier of fact in the present case had to make a whole judgment—whether the conduct of petitioners in all its bearing and under all the circumstances, met the very general standards of §14:103(7). His findings tell us that he took into account their failure to leave when ordered by the police, pure state agents. We know from the companion cases, where this is the whole of the basis for conviction, that this was a significant and highly material factor. It is mixed in this case in indeterminable proportions with the other factor referred to—failure to obey the waitress' supposed "request"—and affects the whole conviction.

reserved for white people, I felt that they were disturbing the peace of the community (R. Briscoe 36).

This testimony makes it entirely clear that the police, in enforcing segregation in this case, were acting on their own responsibility and judgment as public agents of the state within the scope of their authority.

In these three cases, then, we have to do with the enforcement of segregation as a state policy having the force of law, by agents of the state. As petitioner will later show more at large (Point B, *infra*) there is not the ghost of evidence, in any of these cases, of any breach of the peace, or any threat of disturbance, other than such as might be inferred from the mere fact that petitioners were not observing the custom of segregation. Even if the records contained such a showing, it would be of no avail, for the outlawing of segregation by the Fourteenth Amendment is of course a rejection of all the reasons why segregation might be thought good, including the fear of disorder. *Buchanan v. Warley*, 245 U. S. 60; *Cooper v. Aaron*, 358 U. S. 1. But there is nothing of that tenor to consider. These petitioners, in everything but name, were convicted of the simple offense of not following the custom of segregation, and their convictions cannot be sustained without sustaining segregation by the direct force of state law and authority.

- (2) Even if it be urged that there is in these cases a relevant component of formally "private" action, that action is substantially infected with state power. "Private" segregation in these cases was in obedience to a statewide custom, which in turn has long enjoyed the support of Louisiana as a polity.

In the preceding Point, A(1), petitioners have urged that these cases on their own records present no novel questions of "state action", since the enforcement of obedience

to the custom of segregation was the work throughout of formal agencies of the state. It is true, however, that a formally "private" pattern of segregation is in the background of each case, even though, as shown above, no right of private property was distinctly asserted or claimed, and the connection between the "private" pattern and the independent police and judicial action remains vague.

If it be thought that this vague connection between the action of private proprietors and the actions of the State suffices to put in issue the question whether these "private" patterns of segregation were themselves infected with state power, then petitioners contend that that question must be answered in the affirmative.

To begin, the "property" interest of these proprietors was an exceedingly narrow one. In each case, petitioners were not only "invited" but welcomed as cash customers on the premises, everywhere but at the lunch counters. The "property" right at stake was simply the right to segregate. These establishments—a busy drug store, a large department store, a bus terminal restaurant—are a part of the public life of Baton Rouge. The subjection of their policies to constitutional control raises no real issues of individual privacy or freedom of association. *Munn v. Illinois*, 94 U. S. 113; *Marsh v. Alabama*, 326 U. S. 501.

It is against this background that the "state action" question here must be set. And it ought further to be noted that the "state action" doctrine has proven far from satisfactory as a guide among the pervasive realities of state power intermixed in nominally "private" activities widely affecting public life. The basic trouble is adumbrated in the *Civil Rights Cases* opinion itself, where it is laid down that "some" state action is enough, 109 U. S. 3, 13; since total absence of state involvement rarely if ever occurs in matters of public importance, the "state action" doctrine was



from its inception certain to create vast problems. It is far from clear, moreover, that "state" action must always be "political" action; "custom" is mentioned in the *Civil Rights* opinion as one of the forms of state action, 109 U. S. 17, and it may be that this rests on a conception of the "State" as a community, acting through firm customs as well as by formal law. Even verbally, "state action" may not be a validly inferred requirement in equal protection cases, for denial of protection can be accomplished by inaction as well as by action, and in many cases the proper question may be not whether the state has "acted", but whether it has failed to act when it should have done so.

The late Judge Learned Hand, writing on a question of constitutional construction, said that "... for centuries it has been an accepted canon in interpretation of documents to interpolate into the text such provisions, though not expressed, as are essential to prevent the defeat of the venture at hand ..." Hand, *The Bill of Rights*, p. 14. Where formally "private" actions would defeat the constitutional objectives of equality and freedom in the public life, this principle surely has some applicability. Cf. *Terry v. Adams*, 345 U. S. 461.

But in these cases the State of Louisiana is so intimately involved, even in the formally "private" segregation pattern followed by these proprietors, that we need not reach these ultimate problems.

The intervention of police in support of the segregation pattern, and the invocation of the criminal prosecution machinery, are the immediate and obvious state involvements. "Whether the statute book of the State actually laid down any such rule . . . , the State, through its officers, enforced such a rule; . . ." *Civil Rights Cases*, *supra*, 109 U. S. at 15. But the deeper involvement of Louisiana arises from two facts: (1) These proprietors, in segregating, were not

acting on whim, or in obedience to personal taste as to association, but were following a custom that characterizes Louisiana as a community; (2) the maintenance of this custom, by law and other official action, is the policy of Louisiana as a political body.

The only rational or imaginable ground for the "private" segregation followed by these proprietors was obedience to state custom. Though this background fact is assumed rather than explicitly stated in testimony, its presence in the background can be inferred from these records, if such support be thought necessary in regard to a matter of such common knowledge. In *Hoston*, Kress, a nationwide chain which as a matter of common knowledge does not segregate outside the South, is found segregating; the manager testified that he feared a disturbance if petitioners sat in the white section, "Because it isn't customary for the two races to sit together and eat together" (R. Hoston 30). In *Garner*, the owner testified that he *could not* serve Negroes because he had "facilities for only the one race"—a statement which makes sense only against the background of the assumption that Negroes and whites are by custom not to be served together (R. Garner 30, 31). In *Briscoe*, we have to do with the terminal of a national bus company; the facilities of such an enterprise are, as a matter of common knowledge, segregated only in states where such segregation is customary. The interventions of the police in these cases were obviously based on their knowledge of the customary character of this segregation. There is not a scintilla of evidence to rebut the inference that the segregation practiced by these proprietors was a direct consequence, and indeed a part, of the Louisiana custom of public segregation of the races.

The State of Louisiana as a community was thus indispensably involved in this segregation pattern. But Lou-

isiana as a polity is in the same causal chain of involvement, for the State has given to the segregation custom the full support of state law and policy.

There is even good historic ground for the belief that the segregation system, of which the segregation followed as a "custom" in these cases is a part, was brought into being, or at least given firm lines in its inception, by state law. Woodward, *The Strange Career of Jim Crow*, Oxford University Press (1957) 15-25, 81-87, ". . . [S]tateways, apparently changed the folkways," *id.* at 92.

Louisiana has long maintained a system of segregation by law. A joint resolution of the legislature in 1960 has recently restated the official policy of the state.

"WHEREAS, Louisiana has always maintained a policy of segregation of the races, and WHEREAS, it is the intention of the citizens of this sovereign state that such a policy be continued." Acts 1960, No. 630.

In his inaugural address the present Governor succinctly stated the policy of the State: "We will maintain segregation." New Orleans Times-Picayune, May 11, 1960, p. 2, Sec. 3, col. 1-7.

It is true that Louisiana's segregation laws, as such, are no longer enforceable *de jure*. In view of the utterances just quoted, the importance of this fact is hard to evaluate. But in any case it could not break the casual nexus between state support of the custom of segregation and the prevalence of that custom. Effects outlive their causes, but do not thereby cease to be effects of those causes.

Louisiana has a law, passed in 1956, making it a crime to permit mixed white and Negro dancing, social functions, entertainments, "and other such activities involving personal and social contacts" (LSA-R.S. 4:451, Acts 1956,

No. 579). It is uncertain whether the quoted phrase makes it generally unlawful for whites and Negroes to eat together; certainly it would seem to make it unlawful for them to eat together under many circumstances. But this point need not be resolved. For segregation is a *system* rather than a series of isolated provisions. And a State which enacts that whites and Negroes may not eat together on the job or use the same sanitary facilities (LSA-R.S. 23:971-972), go to prison together (LSA-R.S. 15:752), buy a ticket at the same window (LSA-R.S. 4:5), wait in a station together (LSA-R.S. 45:1301-1305), go to a public park or other public recreational facility together (LSA-R.S. 33:4558:1), marry one another (LSA-R.S. 14:79) or even advocate integration, if they are employed in the school system (LSA-R.S. 17:493, 17:523, 17:443, 17:462)—is at least making it vastly more likely that the general custom of segregation will be observed. (The foregoing sampling is of laws currently in force, save as to constitutionality; of course Louisiana has until recently had and enforced segregation laws as to transportation, etc., and the causal effect of these in creating and supporting the interconnected segregation system seems clear, as brought out above.)

The formally "private" segregation practiced in these cases is therefore unbreakably connected with state law, for it is the creature of state custom, and the support of that custom is itself the keystone policy of Louisiana as a political entity. This course of action is not only touched by but permeated with the power of the state.

If the element of "private" choice be thought material on these records, petitioners insist that the quantum and kind of genuine "private" choice in this pattern is negligible, a mere bridge from statewide custom, fostered by state law and policy, into the state criminal machinery. No private interest of these proprietors is at stake, other than the gain

they may look to from following the state-fostered segregation custom. On any view, "state action" permeates the whole pattern. A contrary holding would turn upside down the criterion of the *Civil Rights Cases*, for it would have to rest on the proposition that action is "private" unless it is wholly public—that any small component of nominally "private" choice robs a public pattern of its public character.

**B. Petitioners' convictions denied due process of law, in that they rested on no evidence of an essential element of the crime.**

Louisiana Revised Statutes 14:103, under which petitioners were convicted, reads, in relevant part:

"disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

. . . . .

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

(Petitioners' conviction was had under subsection (7), evidently the only one which could conceivably apply to them.)

In each case, the information contained substantially the following allegation:

" . . . said conduct being in such a manner as to unreasonably and foreseeably disturb the public. . . "

In each of the cases, the "Finding of Guilt" contains a recital corresponding (roughly, and with variations, see *infra* p. 26) to these allegations.

Thus the State of Louisiana formally recognized at every crucial stage that (as indeed is patent as the statute's face) a conviction can be had under the statute only on a finding and a showing that the conduct complained of was performed, in the words of the informations, "in such manner as to unreasonably and foreseeably disturb the public."

There is no evidence in any of the records that this conduct bore any such character. There is much in these records, on the other hand, that tends strongly to rebut the hypothesis.

In the *Garner* case, the owner of the store had received no complaints, and did not summon the police (R. Garner 33, 31). The police witness, Captain Weiner, when asked the general question "Tell the Court exactly what was done?" described a scene of profound peace. He knew of no complaints (R. Garner 34). The rest of his testimony contains no hint of an actual, threatened, or even anticipated breach of the peace. Yet he was being examined on direct by a prosecutor whose duty it was to show through this experienced witness, if he could, that this indispensable element of the crime was present. On cross the questions of counsel repeatedly sought, and never received, something other than the "mere presence" of these Negroes as a ground for the arrest.

In *Briscoe*, again, the waitress' testimony contains no hint of anything other than an occasion profoundly peaceful in its surrounding circumstances. She gave no evidence of so much as grumbling on the part of anyone. Her refusal to serve petitioners was based *solely* on their race *in itself* (R. Briscoe 32). Captain Weiner, again (though with every reason to allude to circumstances of disorder or threatened disorder if they were present) describes a peaceful scene, and gives "the mere presence of their being



there" as the sole factor constituting a breach of the peace (R. Briscoe 38).

In *Hoston*, the situation described in the testimony is one containing no elements of present or threatened disturbance. The manager, it is true, "feared" a disturbance, but he "feared" it, as he testified, solely because "it isn't customary for the two races to sit together and eat together" (R. Hoston 30). The imminence in his mind of what he "feared" may be assessed by his distinct testimony that he did not even ask the petitioners to move (*id* at 34). Weiner's testimony, again, distinctly negates any factor of disturbance of the peace, other than "their mere sitting there" (*id* at 37).

It is on this evidence, and nothing else, that the trial judge made the findings, indispensable under the statute, that "the conduct of the defendants on this occasion at that time and place was an act done in a manner calculated to, and *actually did*, unreasonably disturb and alarm the public" (R. Garner 37, emphasis added), that "their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public" (R. Briscoe 39), that the same conduct "was an act which foreseeably *could* alarm and disturb the public. . . ." (R. Hoston 39, emphasis added). These findings, essential to conviction under the statute, are unsupported by evidence, and a conviction without evidence of guilt is the most elementary possible denial of due process. *Thompson v. Louisville*, 362 U. S. 199.

Since the trial court jumped this gap merely by using conclusory language, and since the State Supreme Court's brief opinion sheds no light on the problem, it is hard to make out on what theory the state courts considered that petitioners could be convicted on testimony so palpably not containing evidence of an essential element of guilt. The



only reasoned utterance of any organ of the State of Louisiana on this question is found in the State's *Brief in Opposition to Petition for Writ of Certiorari*, filed in this case. On pp. 11-13 of that document the thought is developed that petitioners, having access to newspapers and having lived in Baton Rouge, should have known that their actions were likely to produce trouble, and that they were not welcome.

The first of these points goes pretty far. It amounts, for the purposes of these cases, to an assertion that the formation of mobs to attack peacefully protesting Negroes is so expectable a phenomenon in Louisiana that the trial judge, absent any support in the record, must be assumed to have taken judicial notice, *sub silentio*, not only of the likelihood of such trouble but also of the petitioners' knowledge of that likelihood. In the absence of any assertion to this effect by any court in Louisiana, it would be going pretty far for this Court to supply the clear defect of these records by an assumption so gratuitously insulting to the people of Louisiana. Disturbances there have been, in Louisiana as elsewhere, but nothing has yet happened to make it suitable for this Court to assume a position so hopeless.

But even if this assumption be made, the sole upshot, in application to the facts of these cases, is that public protest may be anticipated where Negroes sit with whites, and that fear is not on any view a sufficient ground for state support of segregation. *Buchanan v. Warley*, 245 U. S. 60; *Cooper v. Aaron*, 358 U. S. 1.

As to petitioners' imputed knowledge, suggested by the *Brief in Opposition*, that they were "not welcome", it is to be observed, first, that this falls far short of proving a threat to the peace, or a public disturbance or alarm. More fundamentally, this argument ignores the essence of the sit-in demonstration, which is addressed to the conscience

and to the self-interest of the proprietor. Petitioners may have guessed or known they were "not welcome", in the sense that the proprietors of these stores would rather the whole thing had never come up; but the whole point of the demonstrations was that petitioners wanted to try whether, by solemn protest, they could *gain* the "welcome"—in the cash-nexus sense in which that word may meaningfully here be used—to which they believed themselves morally entitled. Again, the austere utterances of the state courts give no guidance; it is asking a great deal of this Court to ask it to supply the deficiency of these records by guesses as to the degree of "unwelcome" felt by these proprietors, and the connection of that, in turn, with a foreseeable tendency of petitioners' actions unreasonably to "disturb and alarm" the public.

These are speculations, justified only by the corresponding speculations in the *Brief in Opposition*. The hard fact remains that these records are fatally defective as a matter of the simplest due process, for they contain no evidence of an essential element of the crime charged. *Thompson v. Louisville, supra*.

**C. Petitioners were convicted of a crime under the provisions of a state statute which, as applied to their acts, is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment.**

The requirement of civilized law with respect to clarity of the commands in criminal statutes has never been better stated than by the Louisiana Supreme Court:

"... it is well-settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford*, 203 La. 961, 970, 14 So. 2d 778, 781 (1943).

This requirement, as a minimum component in our concepts of ordered liberty, *Palko v. Conn.*, 302 U. S. 319, 325, is an indispensable ingredient of due process of law under the Fourteenth Amendment. *Lanzetta v. New Jersey*, 306 U. S. 451.

On its face and as applied, this statute entirely fails to meet this test. To begin with, all seven of the categories of offenses proscribed are subject, by the introductory clause, to the overriding requirement that the act be done "in such a manner as would foreseeably disturb or alarm the public." Presumably this language embodies some limitation; not every "fisticuff", not every "interruption of any lawful assembly of people," is an offense, but only such as is "done" in the proscribed "manner." But what is the scope and tenor of this limitation? Does the introductory language refer (as it seems to, in the use of the phrase "in such a manner") to some aggravated characteristic of the act itself? Or does it refer (as seems more natural where "foreseeability" is at stake) to the surrounding circumstances?

"Foreseeability", moreover, is in criminal law and in the law of private obligations usually a criterion of responsibility for what actually takes place; to speak of the "foreseeability" of what never happened is at the least a bit unusual. Does this language, then, limit criminal responsibility to the case where the public disturbance and alarm actually take place, and where these might have been "foreseen"? That is the construction suggested by the phrase being defined, "disturbing the peace", for the conclusion goes down hard that "disturbing the peace" can be found to have occurred when the peace is not actually disturbed. Yet the mind remains unsatisfied that this limited construction was (or was not) the one in the legislative mind.

When we get to the very subsection under which these petitioners were charged, a puzzling partial redundancy occurs. The requirement of a connection with public disturbance and alarm is reiterated, though under a different verbal form. The act proscribed by (7) must be committed "in such a manner as to unreasonably disturb or alarm the public." Does this "as to" look toward actual result or does it refer to tendency? Both usages are normal English.

The requirement of foreseeability moreover, dropped out in the special definition of (7), though it doubtless still rides through from the introductory phrase. Does this mean that the actual consequence of public disturbance must be present under (7), while foreseeable tendency to disturbance is enough, say, to bring a "fisticuff" under the statutory ban?

Finally, is the rule *eiusdem generis* applicable to (7)? The other actions prohibited by (1)-(6) are all to some degree disorderly or blameworthy in themselves. Does this limitation subsist as to (7)? Or does the subsection really penalize "any other act" if its further vague criteria are met? (Subsection (4) of this same section penalizes "three or more persons" for any "act" done in a "violent and tumultuous manner"; is it reasonable to suppose that subsection (7) was meant to penalize acts by any number of persons done in a non-violent manner?)

These multifarious indeterminacies, impossible of resolution save by fiat, function in series with the almost total vagueness of each word in the phrase "unreasonably disturb or alarm the public."

The Louisiana Criminal Code contains directions for its own interpretation, but these help very little, or even tend to establish that the application of §14:103(7) to petitioners would contravene the canons of construction ordained. For example:

LSA-A.R. 14:3—Interpretation of Criminal Code.

“ . . . all of its provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.”

The “context” in which §14:103(7) occurs is mainly or entirely one of violence or indecency *in the proscribed action itself*, a characteristic entirely missing in these cases. In LSA-R.S. 14:8, it is enacted that:

Criminal conduct consists of an act or failure to act which produces criminal consequences.

This would tend to suggest that the actual ensuing of disturbance is a defining character of an offense under §14:103(7). The main thrust of these passages, however, is their confirming of the vagueness of §14:103(7).

The Louisiana Legislature must have been doubtful whether §14:103(7) could apply to peaceful sit ins, for an elaborate new §14:103.1, added by Acts 1960, No. 69, §1, provides, among other things that:

“A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

. . . (4) refuses to leave the premises of another when requested so to do by any owner, lessee or any employee thereof, shall be guilty of disturbing the peace.

And Act 1960, No. 77, amending LSA-R.S. 14:56, added to the categories of “criminal mischief” a new one:



"(6) Taking temporary possession of any part or parts of a place of business, or remaining in a place of business after the person in charge of such business or portion of such business has ordered such person to leave the premises and to desist from the temporary possession of any part or parts of such business."

As petitioners have already shown, even these new sections would not apply to them because they were not ordered to leave. (*Supra*, Point A(1), *passim*). But the fact that the legislature conceived it necessary to spell out even this more concrete offense in new legislation makes it most unlikely that any clear command was thought to be embodied in §14:103(7), forbidding the less definite offense of simply being where Negroes are not "supposed" to be.

The introductory part of the new §14:103.1, quoted above, also shows a contrast with the attempted definitions in §14:103(7) "Intent to provoke a breach of the peace", and "circumstances such that a breach of the peace may be occasioned thereby", are far from precise in their reference. But at least it is made clear that either the state of mind of the actor or the potentialities in the situation are being referred to. By contrast, in our §14:103(7), as is shown above, it is impossible even to be sure what the field of reference is.

Prior Louisiana statutes and decisional law are not helpful. The leading case under a prior act roughly similar to §14:103 was *State v. Sanford*, 203 La. 961, 14 So. 2d 778 (1943). Defendants, Jehovah's Witnesses were convicted under the phrase "... who shall do any other act, in a manner calculated to disturb or alarm the inhabitants ... or persons present ..." Acts 1934 No. 227, §1. Their "act" was being in town and handing out magazines after city officials had warned them that their "presence" might cause

trouble. Reversing the convictions, the Supreme Court of Louisiana said:

"... the defendants went about their religious missionary and evangelistic work in an orderly, peaceful and quiet way and did not demand or insist that the persons approached either listen to them or make a contribution. Briefly, their acts and conduct were lawful and orderly and did not tend to cause a disturbance of the peace. The Mayor and the Chief of Police had no legal right to insist that these defendants forego either their religious beliefs and works, or remain away from the town, as long as they conducted themselves in a lawful and orderly manner. . . ." 203 La. 961, 967, 14 So. 2d 778, 780.

This language seems to make the orderly character of the defendants' own actions a defining characteristic of non-culpability. In *Town of Ponchatoula v. Bates*, 173 La. 824, at 827-828, 138 So. 851 at 852 (1931), the same court upholding as against a vagueness claim a town ordinance making it a crime to "engage in a fight or in any manner, disturb the Peace," said:

"It was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. To disturb means to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet. . . . A disturbance of the peace may be created by any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament. Such acts to come



within the purview of the ordinance must be voluntary, unnecessary, and outside or beyond the ordinary course of human conduct."

Here the criterion of *actual result* is obviously in the court's mind.

In *State v. Truby*, 211 La. 178 at 184, 192, 29 So. 2d 758 at 759, 762 (1947) the same court, interpreting a "disorderly place" statute (LSA-R.S. §14:104) said:

"It is so well settled that citation of authority is unnecessary that in Louisiana there are no common-law crimes, and that nothing is a crime which is not made so by statute . . . . [A] penal statute must be strictly construed and cannot be extended to cases not included within the clear import of its language, and . . . nothing is a crime which is not *clearly and unmistakably* made a crime." (Emphasis added.)

Nothing in any of the above decisions has the slightest tendency to bring the petitioners' conduct "clearly and unmistakably" under §14:103(7).

Section 14:103(7), then, is not a warning to the public. It is not a guide to policemen or to courts. It says nothing except perhaps "You'd better watch out," or "Bad actions are to be punished." The legislature, in language impossible of rational construction, has simply furnished a means of convicting those whom it seems desirable to convict.

It is unnecessary to consider how much curative power might have resided in a firm and intelligible judicial construction, channeling the sprawl of these words into permissibly narrow grounds, for, as these cases illustrate, confusion is worse confounded in the application of the statute to petitioners. In its Findings of Guilt, the trial

court used three different formulae, one for each case, though the problem was exactly the same in all. In *Garner*, the act of the petitioners was said to be "an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public" (R. *Garner* 37). (These references to manner and calculation, and to actual result, are, of course, in the teeth of the evidence; see Point B, *supra*.) In *Briscoe*, the very same conduct is said to be "an act on their part as would unreasonably disturb or alarm the public" (R. *Briscoe* 39). In *Hoston*, it "was an act which foreseeably could alarm and disturb the public" (R. *Hoston* 39). It would be tedious and unneedful to subject these utterances to narrow verbal criticism; the least that can be said of them is that they bring no clarity whatever to the total ambiguity and vagueness of the statute.

The brief opinion of the Supreme Court of Louisiana casts no light on any of these questions. The testimony in these cases, as shown *supra* under Point B, has no tendency to connect these petitioners in any way to public disturbance or alarm—whether by way of their intent, or of their foreknowledge, or of actual result, or of probable result. It remains entirely unclear, therefore, how this statute could possibly apply to them.

It is impossible to imagine any statute more pressingly calling for clarity than 14:103(7), for that subsection, on its face, makes criminal any act performable by man, so long as it meets the other tests of the subsection and of the section as a whole. That these tests are not tests at all, but merely a sort of automatic writing putting entire discretion into the hands of the police, has already been shown. This Court has never had under its hand a statute more obnoxious to the due process requirement of definiteness, nor one which reached further into the whole lives of those subject to it.

**D. The decision below conflicts with the Fourteenth Amendment, in that it unwarrantedly penalized petitioners for the exercise of their freedom of expression.**

There could be no serious doubt that petitioners, in peacefully taking their places at the "white" counters, were solemnly expressing their belief that they were morally entitled to be treated on terms of full equality by the establishments that solicited and enjoyed their patronage at other counters. Such a non-verbal expression on a matter of solemn moment is in every way equivalent to speech, and is entitled to constitutional protection. *Stromberg v. California*, 283 U. S. 359, *Thornhill v. Alabama*, 310 U. S. 88. It is entirely immaterial at this point whether they had a legal or constitutional right to enjoy unsegregated service; what is at issue here is something quite different, their right to indicate their conviction that in fairness they should be served. Their expression was completely peaceful, and was exactly adapted to time and place.

Nor is there, in these cases, any problem of the accommodation between private property rights and the right to free expression, cf. *Marsh v. Alabama*, 326 U. S. 501, for these petitioners were not convicted, in name or in substance, for trespass, but solely for being in a place reserved by custom for whites. This has already been conclusively shown, under Point A, *supra*.

We have to do then with a very clear suppression and penalization of expression, by state authority. This fact necessitates a reiteration of Point C, *supra*, in a context which deeply intensifies its impact. The statute invoked in this case is, as shown under Point C, *supra*, so vague and uncertain as to offend against due process, when considered simply as a criminal statute. When it is applied, as here, to the suppression of constitutionally protected utterance, its unacceptability is even more plain. It is,

in fact, in the field of free expression that this Court has most vigorously applied the rule against vagueness. *Smith v. California*, 361 U. S. 147, 151; *Winters v. New York*, 333 U. S. 507, 517-18; see Mr. Justice Frankfurter, concurring in *Burstyn v. Wilson*, 343 U. S. 495, 533.

No valid state interest appears in this case to overbalance the extremely weighty Fourteenth Amendment interest in personal freedom of expression. The state interest in the preservation of the peace can have no application to these records, for they fail to show, or even to hint, that a breach of the peace was threatened. This has been fully shown under Point B, *supra*. In this connection, *Feiner v. New York*, 340 U. S. 315, and *Terminiello v. Chicago*, 337 U. S. 1, may be adverted to, not for their specific holdings, nor for selection among the divergent views expressed in the opinions, but for exhibiting that the debatable ground, on the present point, is miles away from the terrain occupied by the cases here at bar. In *Feiner*, there was some evidence at least of actual danger of outbreak at the very time and place concerned. In *Terminiello*, a situation fraught with imminent possibility of violence was shown to exist. In both *Feiner* and *Terminiello*, moreover, the expressions themselves were intrinsically provocative. In our cases, the whole situation exhibited by these records is one of peaceful conduct on petitioners' part, and peaceful surroundings.

The only "breach of the peace" interest the State arguably had in these cases rested on the remote and inferential possibility, undeveloped in the records or in any judicial utterance below, that somebody might later get ungovernably upset at what petitioners were doing. To sustain these convictions on such a ground would amount to no less than holding that free utterance may be suppressed as a breach of the peace, if it can be guessed that public disagreement with the utterance may be in-

tense. This would be simply the abolition of the guarantee of free expression in America.

The other assertable state interest implemented by these convictions is the interest (abundantly evidenced in the case of Louisiana) in the maintenance of segregation. But this interest can have no constitutional standing, for it takes effect only (as here) as a form of the use of state power to support segregation.

In the aspect now under scrutiny, then, these cases constitute state suppression of expression, under a statute maximally vague, and with no state interest appearing.

### CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of the court below should be reversed.

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# In the Supreme Court of the United States

OCTOBER TERM, 1961

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No. 26

JOHN BURRELL GARNER, ET AL., PETITIONERS

v.

STATE OF LOUISIANA

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No. 27

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA

---

No. 28

JANNETTE HOSTON, ET AL., PETITIONERS

v.

STATE OF LOUISIANA

---

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF LOUISIANA

---

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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## OPINIONS BELOW

The opinions of the Supreme Court of Louisiana in *Garner* (G. 53<sup>1</sup>), *Briscoe* (B. 55), and *Hoston* (H. 55-56) and of the Nineteenth Judicial District Court of Louisiana in each of these cases (G. 37; B. 38-39; H. 38-39) are not officially reported.

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<sup>1</sup> The records in *Garner v. Louisiana*, No. 26, *Briscoe v. Louisiana*, No. 27, and *Hoston v. Louisiana*, No. 28, are referred to as "G.", "B.", and "H.", respectively.

**JURISDICTION**

The judgment of the Supreme Court of Louisiana in *Garner* was entered on October 5, 1960 (G. 53), in *Briscoe*, on October 5, 1960 (B. 56), and in *Hoston*, on October 5, 1960 (H. 55). The petitions for writs of certiorari were granted on March 20, 1961 (365 U.S. 840; G. 56; B. 62; H. 58). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

**QUESTIONS PRESENTED**

Petitioners, who are Negroes, were convicted by a Louisiana state court of disturbance of the peace for having sat at lunch counters reserved for whites. The questions presented and discussed in this brief are:

1. Whether petitioners' convictions violated the due process clause of the Fourteenth Amendment because they are utterly unsupported by evidence proving essential elements of the offense.

2. Whether the due process clause of the Fourteenth Amendment was violated by petitioners' conviction under a statute which, if applied to these circumstances, is so vague and indefinite that it fails to give fair notice of the conduct proscribed.

3. Whether, in the circumstances of this case, petitioners' arrest and conviction violated the equal protection clause of the Fourteenth Amendment because the State was enforcing a government policy of racial segregation.

4. Whether in *Briscoe v. Louisiana*, No. 27, petitioners' arrest and conviction deprived them of their rights under the Interstate Commerce Act to service

on a non-discriminatory basis in a restaurant in a bus terminal operated as part of interstate commerce.

Petitioners also raise additional questions which we believe this Court need not reach (see *infra*, pp. 16-17) and which we therefore have not discussed in this brief:

1. Whether any arrest by state police and conviction by a State court of Negroes who enter and refuse to leave private restaurants customarily open to all members of the public except Negroes constitutes state action violating the equal protection clause of the Fourteenth Amendment.

2. Whether any arrest and conviction of Negroes who enter and refuse to leave such restaurants deprives them of their freedom of expression as protected by the due process clause of the Fourteenth Amendment.

#### **INTEREST OF THE UNITED STATES**

These cases involve racial discrimination and denial of constitutional rights. While it is unnecessary here to reach the constitutional problems common to the so-called "sit-ins" generally, the convictions in these cases arose in the context of a movement which is significant through much of the country. Numerous citizens have participated in this movement, and many have been arrested and convicted by state authorities in circumstances similar to those involved in the cases now before the Court. The United States is, of course, deeply concerned when many of its citizens are arrested and convicted of crime without due process of law and in a manner which denies to them the equal protection of the laws, as guaranteed by

the Fourteenth Amendment. This concern is accentuated when questions of widespread public interest and significance are involved. Beyond that, the government believes that it may be able to assist the Court by focusing upon issues which are dispositive without involving broader and largely uncharted questions concerning the meaning of "State action." It is because of these considerations that the United States deems it appropriate to participate as *amicus curiae*.

#### STATEMENT

*Garner v. Louisiana*, No. 26.—On March 29, 1960, petitioners, two Negro students at Southern University, took seats at the lunch counter in Sitman's Drug Store, Baton Rouge, Louisiana (G. 30). One of the petitioners ordered coffee but was advised by the proprietor of the drug store that he could not be served (G. 30). Although Negroes may buy other goods in the drug section of Sitman's Drug Store at the same counters as whites, there are no facilities for serving food to Negro customers (G. 31-32). Within ten minutes after petitioners had sat down at the counter police officers arrived (G. 30). They were not called by the owner of the store or any of his employees, and the owner did not know who called the police (G. 30-31). Instead, the arresting officers—Major Bauer and Captain Weiner—were summoned by the police officer on his "beat" near the store because he noticed the two Negroes sitting at the lunch counter (G. 34). The owner of the store received no complaints from customers regarding the presence of the two Negroes

at the lunch counter (G. 33), and no other complaint was made to the police department (G. 34-35).

When the police officers arrived at the drug store, Major Bauer approached the students, told them that they were violating the law, and asked them to leave (G. 34). One of the students told the officers that he had purchased an umbrella in the drug store and did not understand why he could not sit at the lunch counter (G. 34). When the students did not leave, the police placed them under arrest, pursuant to L.S.A.-R.S. 14:103(7), for having disturbed the peace, and took them to police headquarters (G. 34-35). Captain Weiner, one of the arresting officers, explained the arrests at petitioners' trial as follows (G. 35):

\* \* \* the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested.

\*       \*       \*       \*

The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103.

He similarly said that "[t]he mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law \* \* \*" (G. 36).

Informations were filed against petitioners which charged that they had violated L.S.A.-R.S. 14:103(7) by refusing "to move from a cafe counter seat at

Sitman's Drug Store \* \* \*, after having been ordered to do so by the agent of Sitman's Drug Store \* \* \*"  
(G. 1).'

After the trial, the trial judge rendered an oral opinion in which he found petitioners guilty of having violated L.S.A.-R.S. 14:103(7) and stated (G. 37):

\* \* \* the evidence put on by the State [was] that these two accused were in this place of business \* \* \* and they were seated at the lunch counter in a bay where food was served and they were not served while there, and officers were called and after the officers arrived they informed these two accused that they would have to leave, and they refused to leave.  
\* \* \* The Court is convinced beyond a reasonable doubt of the guilt of the accused from the evidence produced by the State, for the reason that in the opinion of the Court, the action and conduct of these two defendants on this occasion at that time and place was an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public.  
\* \* \*

Petitioners were convicted and sentenced to imprisonment for four months, three months of which would be suspended upon the payment of a fine of \$100.00 (G. 37-38, 41). Applications for writs of certiorari, mandamus, and prohibition were filed in the Supreme Court of Louisiana (G. 44-46), but the applications were denied on the ground that the court was without jurisdiction to review the facts in criminal cases

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\* The informations in all three cases identified each petitioner as "CM," i.e., colored male, or "CF," colored female (G. 2; B. 2; H. 2).



and the rulings of the district judge on matters of law were not erroneous (G. 53).

*Briscoe v. Louisiana*, No. 27.—On March 29, 1960, petitioners, seven Negro students at Southern University, took seats at the lunch counter at the restaurant in the Baton Rouge Greyhound Bus Terminal (B. 30, 34). They attempted to order food but were told by the waitress that "colored people are supposed to be on the other side" and that the "seats where they were seated are reserved for white people" (B. 30-31). The waitress testified that she had no reason for making these statements to petitioners other than that they were Negroes (B. 31), and that petitioners, besides ordering food, "hadn't done anything other than sit in those seats \* \* \* reserved for whites" (B. 32). The only posted sign read "Refuse service to anyone" (B. 32). Negroes could be served in another part of the bus station in an area reserved for them (B. 30-31, 32, 33-34).

A bus driver who was sitting at a booth near the lunch counter telephoned the police "that there were several colored people sitting at the lunch counter" (B. 33, 34).<sup>1</sup> Captain Weiner, one of the arresting officers, explained that the police "were called because of the fact that [petitioners] were sitting in a section reserved for white people" (B. 35). After the police asked petitioners to move and they had refused, petitioners were arrested for disturbing the peace (B.

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<sup>1</sup> A police officer testified that the desk sergeant was called by "some woman at the Greyhound Bus Station" (B. 34). This hearsay statement was apparently erroneous since the waitress at the restaurant stated unequivocally that one of several bus drivers in the restaurant called (B. 33).

35). Captain Weiner testified that petitioners were arrested because "according to the law, in my opinion, they were disturbing the peace." \* \* \* The fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community" (B. 36). Captain Weiner further emphasized that the basis of the charges against petitioners that they were disturbing the peace was "the mere presence of their being there" (B. 36).

Informations were filed against petitioners which charged that they had violated L.S.A.-R.S. 14:103 (7) by refusing "to move from a cafe counter seat at Greyhound Restaurant after having been ordered to do so by the agent of Greyhound Restaurant \* \* \*" (B. 1). In his oral opinion, the trial judge found petitioners guilty of having violated L.S.A.-R.S. 14:103 (7), and stated (B. 38-39):

\* \* \* it is the decision of the Court that they are guilty as charged for the reason that from the evidence in this case their actions in sitting on stools in this place of business when they were requested to leave and they refused to leave; the officers were called, the officers requested them to leave and they still refused to leave, their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public.

Petitioners received the same sentences as the petitioners in *Gerner* (B. 43-44), and petitioners' post-conviction applications in the Louisiana Supreme Court were denied for the same reason as in the *Gerner* case (B. 46-49, 56).

*Hoston v. Louisiana*, No. 28.—On March 28, 1960, petitioners, seven Negro students at Southern University, took seats at the lunch counter at the S. H. Kress Company store in Baton Rouge (H. 28-29). They were not refused service or asked to move (H. 32-33). Rather, they were simply not served and were "advised" by a waitress that they could be served at another counter in the Kress store where, "by custom," Negroes were served (H. 29, 32-34). Except for the lunch counter, Negroes and whites may make purchases in Kress at all counters (H. 31, 32). There are no signs indicating that the lunch counters are segregated but petitioners were expected to have known this "[b]y custom and by noticing that the colored people were being served at the counter across the store" (H. 32). Although the students did not move, the manager took no immediate action but continued eating his lunch at the counter (H. 29-30). After finishing his meal, he telephoned "the police department that [petitioners] were seated at the counter reserved for whites" (H. 30). The manager testified at petitioners' trial that he called the police because he "feared that some disturbance might occur" (H. 30). The manager also testified that the only conduct of petitioners he considered to be a disturbance of the peace was their presence at the lunch counter (H. 33).

The police, after arriving at the store, asked petitioners to leave since "they were disturbing the peace" (H. 36). When petitioners refused, they were arrested, as one of the arresting officers testified, for

disturbing the peace "[b]y sitting there" "because that place was reserved for white people" (H. 37).

Informations were filed against petitioners which charged that they had violated L.S.A.-R.S. 14:103(7) by refusing "to move from a cafe counter seat at Kress' Store \* \* \* after having been ordered to do so by the agent of Kress' Store \* \* \*" (H. 1). The trial judge, in his oral opinion, found (H. 39):

\* \* \* [petitioners] took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. \* \* \* the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I have just mentioned.

Petitioners were given the same sentences as the petitioners in the *Garner* and *Briscoe* cases (H. 43-44) and petitioners' post-conviction applications to the Louisiana Supreme Court were denied for the same reasons as in those cases (H. 46-49, 55-56).

## SUMMARY OF ARGUMENT

## I

Petitioners' convictions for disturbance of the peace violate the due process clause of the Fourteenth Amendment because there was no evidence tending to prove essential elements of the only offense charged. The informations did not charge the only offense which even conceivably was proved.

A. Since there is no evidence tending to support the convictions under L.S.A.-R.S. 14:103, the convictions violate due process. *Thompson v. City of Louisville*, 362 U.S. 199. This statute requires proof of three basic elements: (1) The accused must commit an act of the kind proscribed; (2) the acts must be done "in such a manner as would foreseeably disturb or alarm the public"; and (3) there must be actual public alarm or disturbance.

1. Petitioners clearly did not commit any acts of the kind proscribed by Louisiana's disturbance of the peace statute. Earlier decisions of the Louisiana Supreme Court make clear that disturbance of the peace includes only violent, loud, or boisterous conduct. *Town of Ponchatoula v. Bates*, 173 La. 823, 138 So. 851 *State v. Sanford*, 203 La. 961, 14 So. 2d 778. This construction is supported, and indeed virtually compelled, by Section 103 itself, for all its specific prohibitions involve such conduct. The records in these cases show that petitioners' acts were

completely peaceful; they merely sat quietly at a counter normally reserved for whites.

2. There is also no evidence tending to prove that petitioners acted "in such a manner as would foreseeably disturb or alarm the public." This requirement is explicitly stated in Section 103 in its introductory language applicable to all seven subdivisions. Petitioners, however, acted peacefully; the restaurant employees merely refused to serve them and indicated that petitioners were sitting at counters reserved for whites. There was nothing in the reaction of these employees or of customers or bystanders even suggesting that petitioners' presence would cause a disturbance. And the police arrested petitioners, not because of the likelihood of a disturbance, but for the sole reason that they were sitting in the wrong place. The only possible basis for the trial court's findings of a foreseeable disturbance is judicial notice, but courts do not take judicial notice of debatable facts, particularly when, as here, they are contradicted by the evidence.

3. There is not the slightest evidence that petitioners' conduct in fact disturbed or alarmed the public. Subsection 7 of the statute, under which petitioners were convicted, is a loose, catch-all provision prohibiting acts committed "in such a manner as to unreasonably disturb or alarm the public." Thus, subsection 7 requires proof of actual alarm or disturbance caused by petitioners' acts. Any other interpretation would render this language redundant with the requirement which applies to all of Section 103—that the conduct foreseeably alarm or



disturb the public. And, furthermore, the history of Section 103 strongly indicates that subsection 7 was intended to be confined to actual disturbances.

B. If the evidence in these cases proves any offense, it is an offense which the informations did not charge. The real thrust of the prosecutions—as both the informations and oral opinions show—is an effort to punish petitioners for criminal trespass. The Louisiana Supreme Court has held that Louisiana's criminal trespass law applies to persons who enter land lawfully, but refuse to leave when ordered to do so by the proprietor. *State v. Martin*, 199 La. 39, 5 So. 2d 377. Here, however, there is no evidence that petitioners were asked to leave. But, in any event, petitioners were charged only with disturbing the peace, not trespass. And this Court has held that it violates due process to convict a defendant of a crime with which he was not charged. *Cole v. Arkansas*, 333 U.S. 196.

## II

The statute under which petitioners were convicted is, if applied to petitioners, so vague and uncertain as to violate due process.

Due process requires that a State statute give fair notice of what conduct is criminal. This requirement should be construed with particular strictness in a case involving, at the least, the possibility that the State is using the statute to promote racial discrimination. The Louisiana disturbance of the peace statute—particularly as interpreted by the Louisiana Supreme Court to apply only to non-peaceful con-



duct (*State v. Sanford, supra*)—does not give the slightest indication that it applies to sitting quietly at a lunch counter which is reserved for persons of another race where there is no disturbance nor reason to foresee a disturbance. If the statute applies to these facts, it can be used to convict anyone for any conduct that local officials, acting *ad hoc*, find distasteful.

### - III

Petitioners' arrest and conviction were the result of State, not privately, imposed racial discrimination and therefore violate the equal protection clause of the Fourteenth Amendment. The State was not merely allowing a private person to carry out private discrimination on his own property or even enforcing such discrimination. Acting through local police and judicial authority, the State was imposing a policy of its own.

A. The records show that petitioners were arrested because of their mere presence at the lunch counters. The police made the arrests not on the request of the managers or employees of the lunch counters but merely because petitioners were Negroes sitting in areas normally reserved for whites.

B. Petitioners' convictions were also based on their race. The only grounds on which the trial court could have found three essential elements of the offense are judicial notice or a ruling that the presence or absence of these elements constituted a question of law. Thus, the trial court must have determined that public alarm or disturbance was foreseeable, that such alarm or disturbance actually occurred, and that peti-

tioners' acts were unreasonable, by concluding that those elements are 'automatically satisfied whenever there is racial integration in public places.

C. This Court has made clear that, if a State statute which is nondiscriminatory on its face is applied in a discriminatory way, this constitutes a violation of the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356. Such unconstitutional discrimination of course occurs whenever enforcement of the law is based on race. State action which promotes a State policy of segregation and therefore violates rights protected by the Constitution cannot be saved by using the label "disturbance of the peace."

#### IV

In *Briscoe v. Louisiana*, petitioners' arrest and conviction violated their rights under the Interstate Commerce Act.

A. In *Boynton v. Virginia*, 364 U.S. 454, 463-464, the Court held that the Act forbids racial discrimination against interstate passengers in restaurants operated "as an integral part of the bus carrier's transportation service for interstate passengers." Although petitioners were not interstate passengers, the Act forbids interstate carriers to discriminate against "any particular person." The record shows that the lunch counter in *Briscoe* was located in the Greyhound Restaurant in the Greyhound bus terminal. It can fairly be inferred, in the absence of any contrary evidence, that the lunch counter is operated as an integral part of interstate commerce.

B. Although petitioners have not presented this issue either to this Court or the Louisiana courts, the Court can properly consider it. If the *Briscoe* case cannot be decided, contrary to our contentions, on the basis of the same constitutional issue as the other two instant cases, consideration of this statutory issue would relieve the Court from considering further constitutional questions. It is of course a basic principle that the Court refuses to adjudicate constitutional issues unless such an adjudication is absolutely necessary to the decision. The parties cannot nullify this principle simply by failing to raise the statutory issue. See *United States v. C.I.O.*, 335 U.S. 106, 110.

#### ARGUMENT

Petitioners, who are Negroes, were arrested by state officers and convicted by State courts of having disturbed the peace by entering and remaining at lunch counters that are reserved for whites. Petitioners argue that (1) the State was enforcing a custom of private racial discrimination in restaurants, which constitutes state action in violation of the equal protection clause of the Fourteenth Amendment (see Pet. Br. 18-24), and (2) the State was interfering with freedom of expression in places open to the public in violation of the due process clause of the Fourteenth Amendment (cf. *Marsh v. Alabama*, 326 U.S. 501) (see Pet. Br. 36-38). These issues are of great national importance, since if petitioners were successful in either their two principal contentions, this would probably be decisive of most of the numer-

ous "sit-in" cases now pending in State courts (see, *e.g.*, Pet. in *Garner*, p. 28). Thus, resolution of these issues might have important effect on the "sit-in" movement which has reached considerable importance virtually throughout the country. On the other hand, these contentions raise broad and, we believe, difficult constitutional problems.

In our view all of petitioners' convictions are invalid on three narrower grounds: (1) the State failed to present any evidence whatsoever to support essential elements of the offenses as defined by State law in violation of the due process clause of the Fourteenth Amendment (see *infra*, pp. 18-33); (2) the Louisiana statute under which petitioners were convicted was so vague and uncertain, as applied to the facts of these cases, as to violate the due process clause of the Fourteenth Amendment (see *infra*, pp. 33-38); and (3) the State, in these particular cases, was itself imposing racial discrimination, not merely enforcing a private landowner's decision, in violation of the equal protection clause of the Fourteenth Amendment (see *infra*, pp. 38-46).<sup>4</sup> Although the issues raised by these propositions are constitutional, they are not only narrower but also, we believe, more easily resolved than the other constitutional issues raised by petitioners. Accordingly we do not discuss the broader questions.

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<sup>4</sup> In addition, we believe that the convictions in *Briscoe* are invalid because they violate the Interstate Commerce Act (see *infra*, pp. 46-51).

## I

THE CONVICTIONS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THERE WAS NO EVIDENCE TENDING TO PROVE ESSENTIAL ELEMENTS OF THE ONLY OFFENSE CHARGED AND NO CHARGE OF ANY OFFENSE PROVED

A. THERE WAS NO EVIDENCE TENDING TO PROVE THAT PETITIONERS VIOLATED L.S.A.-R.S. 14:103(7) AS CHARGED IN THE INFORMATIONS.

In *Thompson v. City of Louisville*, 362 U.S. 199, 204, 206, this Court held that a conviction in a State court must be set aside under the Fourteenth Amendment "if there is no support for these convictions," or "[t]he record is entirely lacking in evidence to support any of the charges," or is "without evidence of his guilt." Cf. *Konigsberg v. State Bar*, 353 U.S. 252; *Schwartz v. Board of Bar Examiners*, 353 U.S. 232; *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106. The decision does not mean that a federal court may reverse a State conviction merely because, upon re-evaluating the record, it finds that the evidence is insufficient to support the conviction. The conviction violates due process, however, if there is *no evidence at all* tending to prove one or more of the essential elements of the offense.

The arrest, arraignment, and conviction of each of the petitioners were specifically based upon subsection 7 of the Louisiana statute punishing disturbance of the peace. L.S.A.-R.S. 14:103(7). The statute provides:

Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

- (1) Engaging in a fistie encounter; or
- (2) Using of any unnecessarily loud, offensive, or insulting language; or
- (3) Appearing in an intoxicated condition;  
or
- (4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or
- (5) Holding of an unlawful assembly; or
- (6) Interruption of any lawful assembly of people; or
- (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

To support a conviction under this statute there must, as we shall show below, be proof of three basic elements of the offense:

- (1) The accused must commit an act of the kind proscribed by the statute;
- (2) The acts must be done "in such a manner as would foreseeably disturb or alarm the public";
- (3) If the charge is under subdivision 7, there must be actual public alarm or disturbance.

The cases come here upon the evidence taken and the findings made in the trial court, for the Supreme Court of Louisiana refused to review the evidence upon the ground that it was "without jurisdiction to review facts in criminal cases" (G. 53; B. 56; H. 56). In none of the three cases was there any evidence to prove any of the three indispensable elements of the offense defined by the statute. In some instances the trial court did not even make a finding upon an essen-



tial element. Therefore, the convictions should be set aside upon the authority of *Thompson v. City of Louisville*.

1. *Petitioners did not commit any acts of the kind proscribed by L.S.A.-R.S. 14:103*

L.S.A.-R.S. 14:103 proscribes six specific acts which constitute a breach of the peace when done in a manner which would foreseeably disturb or alarm the public. Subsection 7 then forbids "[c]ommission of any other act in such a manner as to unreasonably disturb or alarm the public." Admittedly, petitioners engaged in none of the conduct described in the first six subsections. They were charged specifically with violation of subsection 7, an earlier version of which the Supreme Court of Louisiana aptly described as "the general portion of the statute which does not define the 'conduct or acts' the members of the Legislature had in mind" (*State v. Sanford*, 203 La. 961, 967, 14 So. 2d 778).

The State decisions giving content to the general words make it plain that subsection 7 does not embrace peaceful conduct such as that of petitioners. In *Town of Pouchatoula v. Bates*, 173 La. 823, 138 So. 851, the Louisiana Supreme Court held under an ordinance simply prohibiting disturbance of peace that a disturbance of the peace is "any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal tempera-



ment." (173 La. at 828). A challenge to rooted customs may cause intellectual unrest or emotional excitement, but it is plain that the court's definition of a breach of the peace uses these words to encompass only conduct which is violent, loud, or boisterous, or which is provocative in the sense that it induces a physical disturbance such as fighting, riot or tumult, or which arouses the fear of these disturbances among persons of normal temperament. A later decision makes this plain. In *State v. Sanford*, 303 La. 961, 14 So. 2d 778, the evidence showed that thirty Jehovah's Witnesses approached a Louisiana town for the purpose of distributing religious tracts and persuading the public to make contributions to their cause. The Witnesses were warned by the Mayor and police officers that "their presence and activities would cause trouble among the population and asked them to stay away from the town \* \* \*" (203 La at 964). The trial court found that the Witnesses entering the town and stopping passers-by in the crowded main street under these circumstances "might or would tend to incite rioting and disorderly conduct" (*id.* at 965). The Supreme Court of Louisiana set aside convictions for breach of the peace, thus holding in effect that the defendants were not pursuing a "disorderly course of conduct which would tend to disturb the peace." Although the language of the statute was subsequently altered, there is nothing in the change or in subsequent court decisions to throw doubt upon this ruling.

Indeed, the conclusion that L.S.A.-R.S. 14: 103(7) does not reach peaceful and orderly conduct is virtu-

ally compelled by reading the statute as a whole. The first six subsections deal with violence or loud boisterous conduct. The only possible exceptions are (i) the use of insulting language, which in this context plainly refers to insults calculated to provoke violence, and (ii) the holding of an unlawful assembly, which is also likely to result in the outbreak of violence. The catch-all language in subsection 7 would normally be interpreted in the light of the preceding subsections as an effort to cover other forms of violence or loud and boisterous conduct not already listed.

It is also apparent that the Louisiana legislature doubted whether L.S.A.-R.S. 14:103(7) covered petitioners' acts. Immediately after the events for which petitioners are being prosecuted, the legislature rewrote the statute and added a definition of acts which may cover the present case (L.S.A.-R.S. 14:103.1 (1980 Supp.)):

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

The contrast between this language and the statute under which petitioners were accused confirms the interpretation flowing from the judicial precedents and the natural meaning of the words.

In these cases, there can be no doubt that petitioners' acts were peaceful. They merely sat down quietly at counters reserved for whites. Such conduct is clearly not of the kind proscribed in Louisiana as disturbance of the peace.

2. *There was no evidence tending to prove that petitioners acted "in such a manner as would foreseeably disturb or alarm the public"*

Even if petitioners committed acts of the kind embraced by the statute, they could not be convicted without proof that the acts were done, "in such a manner as would foreseeably disturb or alarm the public." L.S.A.-R.S. 14:103 sets out this element of the offense in the introductory language applicable to all seven divisions.

Although the trial court found that petitioners' conduct was calculated to alarm and disturb the public (G. 37; B. 39; H. 39), there was an absolute lack of evidence to support the finding. Petitioners sat down quietly at a lunch counter normally reserved for whites. In *Gerner* they were told that they could not be served because they were Negroes, but they were not even asked to move. They remained there quietly until ten minutes later when the police arrested them (G. 30-32). In *Briscoe*, the waitress told them that "colored people are supposed to be on the other side," and declined to serve them (B. 30-31). They remained quietly in their seats until they were arrested upon the arrival of the police. In *Hoston* they were told by the waitress that they could be served at another counter. They were not asked to leave and

stayed where they were until once again the police made the arrests (H. 29, 32-34). There was nothing in this conduct which could conceivably "disturb or alarm the public."

Admittedly, petitioners did not engage in violence or any other loud or tumultuous conduct. There is nothing in sitting quietly at a lunch counter, even though one knows that he may not be welcome, which can be said by its very nature to give him warning of public alarm. Petitioners made no speeches. They did not even speak to anyone except to order food. They carried no placards, and did nothing, beyond their presence, to attract attention to themselves or others.

There is nothing in the reaction of the manager or waitresses or in the conduct of customers or bystanders to suggest that petitioners' presence would cause a public disturbance. Negroes were welcome in all three establishments. The arresting officers testified that petitioners' sole offense was that they, being Negroes, sat in a section reserved for whites (G. 35-36; B. 35-36; H. 37). In the *Garner* case neither the owner of the drug store nor any bystanders thought it necessary to call the police. The arrests were made because a policeman near the store saw that Negroes were sitting at the white lunch counter. (G. 30-31, 34). He gave no testimony of an actual disturbance nor did he say that there was a reason for fearing a breach of the peace. In *Briscoe*, the waitress testified that petitioners "hadn't done anything other than sit in these seats \* \* \* reserved for whites" (B. 32). In *Hoston* the manager did testify that he "feared

that some disturbance might occur" (H. 30), but he was so little concerned that he continued to sit at the same lunch counter eating his lunch and waited until he was finished to call the police. The manager also acknowledged that the only conduct which he considered disturbing was the petitioners' mere presence at the counter (H. 29-30, 33). He gave no reasons for his concern and did not say what he meant by a "disturbance." Under these circumstances, the manager's general statement gives "no support" for the convictions, within the meaning of *Thompson v. City of Louisville*, *supra* (see 362 U.S. at 204).

The police gave no evidence that a public disturbance was to be anticipated. In *Garner*, Captain Weiner, one of the arresting officers, explained that he made the arrests because "the law says that this place was reserved for white people" (G. 35). In *Briscoe*, Captain Weiner said that, "The fact their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community" (B. 36). Captain Weiner's testimony in *Hoston* was substantially the same (see H. 36-37). Not a single police officer said a word which even remotely implies that fighting, loud words, or any other disorder seemed likely to occur.

It may be argued that the finding that disturbances were a foreseeable result of the mere presence of Negroes at the lunch counter was based on judicial notice derived from general knowledge of the community—perhaps coupled, as the State suggests, with newspaper stories which are not in the record (Brief in Opp., pp. 11-12). But courts can take judicial

notice, especially in criminal cases, only of obvious and incontrovertible facts. *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U.S. 292, 301; *United States v. Shaughnessy*, 234 F. 2d 715, 718 (C.A. 2); McCormick, *Evidence*, § 324 (1954). Certainly, it is neither obvious nor incontrovertible, in the present day, that a disturbance may occur merely because Negroes sit peacefully at a lunch counter theretofore reserved for whites. All the facts presented in these cases indicated that no disturbance would occur. The constitutional requirement that a State introduce some evidence of each of the essential elements of a criminal offense before conviction cannot be cast aside through judicial assumptions which are dubious at best and are also contradicted by the evidence in the record.

Of course, it is plain that petitioners' conduct was likely to disturb the sensibilities of those members of the public who hoped for the preservation of racial segregation in restaurants and at lunch counters. It would arouse resentment among the prejudiced. But the decision in *State v. Sanford*, *supra* (203 La. 961, 14 So. 2d 778), makes it clear that L.S.A.-R.S. 14:103 does not reach conduct which merely disturbs or alarms members of the public in this sense of the words.

As stated above, the Jehovah's Witnesses whose convictions were reversed in *State v. Sanford* had been warned by the Mayor and police officers that "their presence and activities would cause trouble among the population and asked \* \* \* to stay away from the town \* \* \*" (203 La. at 964); and the trial court



found that the Witnesses entering the town and stopping passersby in the crowded main street under these circumstances "might or would tend to incite rioting and disorderly conduct" (*id.* at 965). The Supreme Court of Louisiana held that, as a matter of law, this was not "disorderly course of conduct which would tend to disturb the peace." (*id.* at 970).

3. *There was no evidence tending to prove that petitioners' conduct disturbed or alarmed the public*

In the *Briscoe* and *Hoston* cases there was neither evidence nor a finding that petitioners had caused a disturbance. In the *Garner* case the trial court made such a finding (G. 37), but there is not a scintilla of evidence to support it. There was no fighting, no pushing or shoving, no argument nor even loud talk; there were no speeches nor the congregation of an unusual number of people. It was not even shown that the presence of petitioners attracted public attention. If, as we believe, the actual disturbance of some part of the public is a third essential element of the offense defined by L.S.A.-R.S. 14:103(7), then the convictions must be invalidated for an absolute lack of evidence.

Under the first six subsections of L.S.A.-R.S. 14:103, which proscribe specific acts, proof of an actual disturbance is not required. The seventh subsection is a loose catch-all of undefined conduct except as limited by implication, and it would therefore be natural to confine its generality by adding other indicia of misconduct. The language alone is enough to show that this was done by adding the requirement



that the "acts," whatever they might be, be done "in such a manner as to unreasonably disturb or alarm the public." The rest of L.S.A.-R.S. 14:103 shows that these words refer, not to tendency of the acts, but to their actual consequences.

Thus the opening sentence provides that "[d]isturbing the peace is the doing of any of the *following* in such a manner as would foreseeably disturb or alarm the public \* \* \*" (emphasis added). If subsection 7 is construed to cover any act likely to disturb or alarm, it simply repeats the opening sentence. It would certainly be unusual, to say the least, for the legislature to write a statute which prohibits acts which probably will disturb or alarm the public when done "in such a manner as would foreseeably disturb or alarm the public \* \* \*." If this were the intent, the redundancy could easily have been avoided by stating that "[d]isturbing the peace is the doing of any act in such a manner as would foreseeably disturb or alarm the public including \* \* \*"; and then setting out the first six subsections of Section 103. The addition of subsection 7 shows that actually causing disturbance or alarm was intended to be an element of the crime.

Our construction is reinforced by the history of Louisiana's legislation punishing disturbance of the peace. Prior to 1942, the statute specifically prohibited only loud or obscene language, exposing one's person, or using a deadly weapon in a public place, and then provided in a catch-all section that "any person \* \* \* who shall do any other act, in a manner calculated to disturb or alarm the inhabitants \* \* \* or

persons present" would be guilty of a misdemeanor. Act No. 227 of 1934. In 1942, the statute was changed to its present form, which eliminates the last two specific prohibitions mentioned above but adds five other specific prohibitions. Further, the present act requires proof that even acts within the specific prohibitions will foreseeably disturb or alarm the public—a requirement which the 1934 act applied only to the catch-all provision. The language in the catch-all provision itself has been significantly changed from prohibiting "any other act, in a manner calculated to disturb or alarm the inhabitants \* \* \*" to prohibiting "[c]ommission of any other act in such a manner as to unreasonably disturb or alarm the public." It thus appears that the Louisiana legislature in 1942 decided to spell out in more specific prohibitions acts which were previously covered in the catch-all provision. Having specifically prohibited the disturbances of the peace with which it was primarily concerned, the catch-all provision was limited, probably for the reason suggested above, so as to cover only actual disturbances.

Moreover, immediately after the events involved in these cases, the Louisiana legislature passed a disturbance of the peace statute which has significantly different language than the statute involved in this case. That statute (quoted *supra*, p. 22) clearly requires proof that a disturbance was at most foreseeable or likely. The language used in Section 103 is in marked contrast.

Barring any inferences which can be drawn from the decision below, there are no Louisiana cases upon this question. The decision below gives no guidance because there is no opinion, and the court refused to examine the evidence (G. 53; B. 56; H. 56). Under these circumstances this Court should adopt the interpretation which is supported by analysis of the language and history of act and hold that a conviction under subsection 7 requires actual alarm or disturbance. Since there was no evidence of this element of the crime, it furnishes an additional reason for voiding the convictions.

B. IF THE EVIDENCE TENDS TO PROVE ANY OFFENSE, IT IS AN OFFENSE NOT CHARGED. CONVICTION FOR SUCH AN OFFENSE WOULD VIOLATE THE FOURTEENTH AMENDMENT

It seems apparent that the real thrust of the prosecutions was an effort to convict petitioners of criminal trespass, or perhaps to punish them for seeking, in violation of State policy, to eat at lunch counters previously reserved for whites. To impose sentence upon either ground when the information alleged disturbing the peace would violate the Fourteenth Amendment as a conviction upon a charge not made. *Cole v. Arkansas*, 333 U.S. 196. To stretch L.S.A.-R.S. 14:103, which proscribes breach of the peace, so as to cover either of these offenses, even if proper as a matter of State law, is to render it void under the federal Constitution as a vague and indefinite criminal statute which gives no notice of the offense. See Point II, pp. 33-38, *infra*. And of course, a conviction

for violating a State-imposed policy of segregation in public restaurants would be invalid as a denial of equal protection of the law. See Point III, pp. 38-46), *infra*.

The record contains some elements of a criminal trespass under many State laws, but it seems doubtful whether the Louisiana trespass statute is applicable. The closest provision was L.S.A.-R.S. 14:63 which prohibits "[t]he unauthorized and intentional entry upon any: (a) enclosed and posted plot of ground; or \* \* \* (c) structure \* \* \*." In these cases, however, petitioners' initial entry into the structure was authorized since the business invited the trade of Negroes and therefore authorized them to enter. While petitioners were not authorized to enter the portions of the structure reserved for whites, the statute apparently prohibits entry into a portion of a structure only if it is enclosed and posted. None of the lunch counters involved in these cases was enclosed and posted. It does not help the State's case to point out that, despite its language, the Louisiana Supreme Court has held that the statute applies to persons who enter land lawfully, but refuse to leave when ordered to do so by the proprietor. *State v. Martin*, 199 La. 39, 5 So. 2d 377 (1941). In the *Garner* and *Hoston* cases, the owner did not ask petitioners to leave the premises or even to move from the counter (G. 30-33; H. 32-33). In the *Briscoe* case, petitioners were merely told by a waitress that they were seated at a counter reserved for whites and would have to go to another counter to be served

(B. 30-33).<sup>8</sup> In this case, unlike *State v. Martin*, there was no evidence that the proprietor or his agent unequivocally requested any petitioner to leave the premises.<sup>9</sup>

<sup>8</sup>In all three cases, the informations alleged that petitioners refused to leave after being ordered to do so by an agent of the owner (G. 1; B. 1; H. 1). As to the findings, the trial court stated in *Garner* only that the police asked petitioners to leave just before they were arrested (G. 37); in *Briscoe* that they were asked to leave (by whom is not stated) before the police arrived (B. 38-39); in *Hoston* that an employee of the store or the manager advised them "that they would be served over at the other counter" and that they refused to leave when requested (H. 39).

The evidence at trial, however, shows in *Garner* that petitioners were advised that they could not be served, but they were never asked by the proprietor or any employee to leave (G. 30); in *Briscoe*, although the prosecutor's leading questions assume that petitioners were asked to move (B. 31), the witness's testimony directly on this subject was that petitioners were told only that "colored people are supposed to be on the other side" and that the "seats where they were seated are reserved for white people" (B. 30-31); and in *Hoston* the petitioners were not served and were "advised" by a waitress that they could be served at another counter (H. 29, 32-33, 34), but the testimony is explicit that they were never refused service or asked to move (H. 32-33).

<sup>9</sup>Apparently the Louisiana legislature believed that the criminal trespass statute in force during these events did not cover "sit-ins." In 1960 the legislature passed a new criminal trespass statute which reads (L.S.A.-R.S. 14:63.3 (1960 Supp.)):

"No person shall without authority of law go into or upon or remain in or upon any structure \* \* \* which belongs to another \* \* \* after having been forbidden to do so \* \* \* by any owner, lessee, or custodian of the property or by any other authorized person. \* \* \*"

This measure was enacted and approved by the Governor, as an emergency measure on June 22, 1960, immediately subsequent to the incidents involved in these cases.

We refer to the criminal trespass statute chiefly to suggest some explanation of why the prosecutor attempted, without evidence, to convict petitioners of disturbing the peace. As a matter of law it is immaterial whether the evidence made out a criminal trespass. Petitioners were charged specifically with disturbing the peace in violation of L.S.A.-R.S. 14:103(7). Under the law of Louisiana and the United States Constitution, therefore, petitioners could not be lawfully convicted of some different offense. *State v. Morgan*, 204 La. 499, 15 So. 2d 866 (1943); *Cole v. Arkansas*, *supra*. Moreover, disturbing the peace was the only issue at trial. As this Court held in *Cole v. Arkansas* (333 U.S. at 201), "It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made."

## II

THE STATUTE UNDER WHICH PETITIONERS WERE CONVICTED IS, IF APPLIED TO PETITIONERS, SO VAGUE AND UNCERTAIN AS TO VIOLATE DUE PROCESS

Since the Louisiana courts have final authority to interpret State legislation, it might have been permissible, as a matter of State law, for Louisiana to disregard the language of L.S.A.-R.S. 14:103 and its own prior decisions and reinterpret the statute to punish petitioners' peaceful conduct. If that be the significance of the decision below, there may be evidence to support the judgments, but the convictions fall upon another constitutional ground—the statute becomes so vague and indefinite that its enforcement denies



due process of law in violation of the Fourteenth Amendment.

**A. DUE PROCESS REQUIRES THAT A STATE STATUTE GIVE FAIR NOTICE OF WHAT CONDUCT IS CRIMINAL**

This Court has repeatedly held that a State statute violates the due process clause of the Fourteenth Amendment if it fails (i) to give fair notice of what acts it encompasses and (ii) to provide the trier with a sufficiently definite standard of guilt to avoid conviction on an *ad hoc* basis.' *E.g.*, *Lanetta v. New Jersey*, 306 U.S. 451; *Connally v. General Construction Co.*, 269 U.S. 385; *Musser v. Utah*, 333 U.S. 95, 97; *Winters v. New York*, 333 U.S. 507, 519. As this Court observed in *Connally* (269 U.S. at 391):

“ \* \* \* a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Similarly, in *Lanetta*, the Court defined the fair notice required by due process as (306 U.S. at 453):

“ \* \* \* No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids. \* \* \* ”

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‘ It is possible that the requirement of clarity with respect to fair notice to defendants is not exactly equivalent to the requirement with respect to guidance for the State courts, because it may be assumed that the State judges are more competent to interpret a statute than are prospective defendants.

‘ *Nash v. United States*, 229 U.S. 373, is not to the contrary. There Mr. Justice Holmes said that “ \* \* \* the law is full of instances where a man's fate depends on his estimating rightly,



Thus, when a statute gives a defendant insufficient notice of the conduct prohibited, his conviction is invalid.

**B. SECTION 103(7) DID NOT GIVE FAIR NOTICE TO PETITIONERS  
THAT THEIR ACTIONS WERE ILLEGAL**

Section 103(7) has on its face several ambiguities. It is not entirely clear whether the prosecution must show an actual disturbance of the peace or only that such a disturbance is foreseeable (see *supra*, pp. 27-28); or whether subsection 103(7) prohibits unreasonable acts which cause a disturbance of the peace or acts which cause the public to act unreasonably. Furthermore, the meaning of "unreasonably" is not defined. Despite these difficulties, we assume *arguendo* that the statute is constitutional if it is construed as we have suggested, i.e., if it applies only to the acts specifically listed and other similar violent, loud, or boisterous conduct of the kind generally known to disturb the public order. It was only upon this reading that the Louisiana Supreme Court sustained the constitutionality of earlier but similar legislation. *State v. Sanford, supra*, 203 La. 961, 14 So. 2d 778.

The instant cases, however, do not involve an ordinary disturbance of the peace. *First*, all three cases involve racial discrimination. In our view, the facts

that is, as the jury subsequently estimates it, some matter of degree" (*id.* at 377). But this statement only illuminates the undisputed fact that "the Constitution does not require impossible standards"; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices \* \* \*'. *Roth v. United States*, 354 U.S. 476, 491.

clearly show that the State was itself promoting its own policy of racial discrimination (see *infra*, pp. 38-46), but even if this contention is not accepted, petitioners' arrest and conviction at the least have the effect of promoting private racial discrimination. In such circumstances, we submit that this Court should apply a strict standard in determining whether a statute is unconstitutionally vague. For a vague statute provides all too easy means by which a State can impose *ad hoc* criminal penalties in order to promote racial discrimination. *Winters v. New York*, 333 U.S. 507, 509-510, 517, indicates that the degree of certainty required for due process is particularly strict in the delicate area of freedom of expression; otherwise, the Court said, expression which is constitutionally protected would be effectively prohibited by the very vagueness of the law. See also *Smith v. California*, 361 U.S. 147, 151. Similar considerations call for a strict standard of constitutional certainty in any statute applied to support racial discrimination.

Second, there is not a word in L.S.A.-R.S. 14:103 which suggests that it prohibits sitting quietly at a lunch counter, in a store into which one has been invited by the proprietor, and asking for service despite the proprietor's previous policy of racial segregation. Nor is there any warning that staying there peacefully after service has been refused becomes criminal. Petitioners' conduct caused no disturbance; there was no reason to foresee a disturbance. If the statute applies to these facts, it can be used to convict anyone for any conduct that the local officials, acting *ad hoc*, find distasteful.

Interpretation of a State statute prior to the defendant's conduct may sometimes clarify otherwise indefinite language sufficiently to satisfy the requirements of fair notice. See *e.g.*, *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574; *International Harvester Co. v. Kentucky*, 234 U.S. 216. Here, however, the latest decision of the Louisiana Supreme Court on this subject interpreted the predecessor disturbance-of-the-peace statute (one which, unlike the statute involved in this case, clearly did not require proof of an actual disturbance (see *supra*, pp. 28-29)) so as not to apply to peaceful activities. *State v. Sanford*, *supra*. The Louisiana court interpreted the statute in this manner partially because (203 La. at 970):

\* \* \* to construe and apply the statute in the way the district judge did would seriously involve its validity under our State Constitution, because it is well-settled that no act or conduct however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute.\* \* \*

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\* The Louisiana Supreme Court has repeatedly recognized that under its own constitution fair notice is an element of due process. See, *e.g.*, *State v. Christine*, 239 La. 259, 118 So. 2d 403 (1960); *State v. Sanford*, *supra*; *State v. Kraft*, 214 La. 251, 37 So. 2d 515 (1948). In *State v. Kraft*, *supra*, the court explained the requirement of certainty (214 La. at 256):

\* \* \* It is sufficient to say that a criminal statute, in order to be valid and enforceable, must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the harder line between that which is and that which is not denounced as an offense against the law."

The per curiam decisions of the Louisiana Supreme Court in the instant cases are directly contrary to the *Sanford* case since here the court applied Section 103 to completely peaceful activity. Thus, petitioners were not given fair notice that their conduct was criminal either by the terms of the statute or by its interpretation in the Louisiana courts.

### III

UNDER THE CIRCUMSTANCES OF THESE CASES, PETITIONERS' ARREST AND CONVICTION WERE THE RESULT OF STATE, NOT PRIVATELY, IMPOSED RACIAL DISCRIMINATION AND THEREFORE VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

As we have shown above (pp. 18-33), the records in these cases are devoid of evidence which could sustain a conviction for disturbing the peace. But despite this lack of evidence of any violation of L.S.A.-R.S. 14:103(7), petitioners were arrested and convicted. Under the circumstances of these cases, it seems plain that the arrests and convictions were simply attempts to effectuate a State policy of racial segregation which violates the equal protection clause of the Fourteenth Amendment."

"The Louisiana State policy of racial segregation is indicated by a multitude of legislation. In 1960, the legislature passed a joint resolution which began (Act No. 630 of 1960):

"Whereas, Louisiana has always maintained a policy of segregation of the races, and

"Whereas, it is the intention of the citizens of this sovereign state that such a policy be continued. \* \* \*

There are statutes in Louisiana which require segregated seating on trains (L.S.A.-R.S. 45:526-528), and in railroad waiting rooms (L.S.A.-R.S. 45:522-525); which specify that court dockets shall reflect the race of the parties in divorce cases (L.S.A.-R.S. 13:917); which compel segregation in penal

In contending that petitioners' arrest and conviction were a denial of equal protection of the law, we do not rely on the obvious fact that since petitioners were considered both by the restaurants and the police to be sitting in the wrong place merely because they were Negroes, their arrest and conviction depended on their race. While petitioners argue that this enforcement of local custom constitutes racial discrimination enforced by State action within the meaning of the Fourteenth Amendment, (Pet. Br. 18-24), we do not consider it necessary to reach this "broad" contention (see *supra*, pp. 16-17). For here petitioners' arrest and conviction were the result of the State's own policy of racial discrimination even though it happened to be combined with privately imposed discrimination. The State was not merely allowing a private person to carry out private discrimination on his own property or even enforcing such discrimination. Acting through local police and judicial authority, it imposed a policy of its own.

A. The records show that petitioners were arrested because of their "mere presence" at the lunch counters. The police officers acted, not to curb a disturbance of the peace but to carry out what they

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institutions (L.S.A.-R.S. 15:752); which prohibit persons of one race from establishing residence within a "community" of the other race without approval of a majority of the residents of the other race (L.S.A.-R.S. 33:5066); which require segregated box offices for circuses (L.S.A.-R.S. 4:5) and which prohibit the arrangement of dances, athletic contests, etc., where Negroes and whites will be present together (L.S.A.-R.S. 4:451-455). Even the blind are segregated under Louisiana law (L.S.A.-R.S. 17:10). In these very cases each petitioners' race was indicated on the information (see *supra*, p. 6, note 2).

considered to be the State policy of racial segregation. The *Garner* case shows this most clearly, for there the owner, while advising petitioners that they would not be served, did not order them to leave and neither he nor any of his employees or customers called the police (G. 30-31). Rather, the police officers who made the arrest were called by a police officer on his beat near the store (G. 34-35). Thus, the arrival and subsequent actions of the police were entirely unsolicited by any private citizen. The only police officer who testified at petitioners' trial stated that the police acted because " \* \* \* the law says that this place was reserved for white people and only white people can sit there and that was the reason they were arrested. \* \* \*. The fact that they were sitting there and in my opinion were disturbing the peace by their mere presence of being there I think was a violation of Act 103. \* \* \*. The mere presence of these negro defendants sitting at this cafe counter seat reserved for white folks was violating the law \* \* \* " (G. 35-36).

Thus, the police officers' action was not in any way directed at protecting the property rights of the owner of the drug store. Plainly, this direct, unsolicited, and affirmative action of the police represents a form of State action designed to effectuate a State policy of racial segregation. That action is as clearly unconstitutional as if it had been taken under a statute specifically requiring the segregation of the races. In the words of Mr. Justice



Frankfurter, dissenting on other grounds in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 727:

\* \* \* For a State to place its authority behind discriminatory treatment based solely on color is indubitably a denial by a State of the equal protection of the laws, in violation of the Fourteenth Amendment. \* \* \*

Concededly, the role of the State in *Briscoe* and *Hoston* is not quite as independent of private action as it is in *Garner*. In *Briscoe*, the police were called by a patron, a Greyhound bus driver (B. 33), and in *Hoston*, the police were summoned by the store manager (H. 30). But in neither case were the police told that their assistance was needed for any reason other than that Negroes were sitting at a lunch counter reserved for whites. In *Briscoe*, the call to the police advised that "there were several colored people sitting at the lunch counter. \* \* \* [The police] were called because of the fact that [petitioners] were sitting in a section reserved for white people" (B. 34-35). In *Hoston*, the police were told that "they [the Negroes] were seated at the counter reserved for whites" (H. 30). There is no evidence that either the bus driver or the store manager summoned the police because petitioners refused to leave upon request.<sup>22</sup> Thus, in both *Briscoe* and *Hoston* the calls to the police did no

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<sup>22</sup> In any event, it is hardly likely that a request to move would have provided any greater justification for the arrests in these cases. A refusal to move is not an element of the crime for which these petitioners were arrested and convicted.



more than bring to the officers' attention what they observed for themselves in *Garner*.

There was no evidence that the police were requested to arrest petitioners.<sup>12</sup> The arrests in the other cases were made by the same officers who acted in *Garner*, and for the same reasons. Thus, in *Briscoe*, the police officer who testified in *Garner* stated that "the mere presence of their being there" was the reason for petitioners' arrest (B. 38). "[A]ccording to the law, in my opinion, they were disturbing the peace. \* \* \* The fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community" (B. 36). Similarly, in *Hoston*, the same officer testified that petitioners were disturbing the peace "[b]y sitting there" "because that place was reserved for white people" (H. 37). Whether the police acted of their own volition or in response to a call in no way affects the fact that these arrests ostensibly for disturbing the peace, but actually based on petitioners' mere presence, were but a means of enforcing a State policy of racial segregation.

B. It is also clear that petitioners' conviction was based on their race, and for this independent reason is a denial of equal protection of the laws. As we have shown above (pp. 23-30), the prosecution introduced no evidence upon essential elements of the statutory offense: upon whether a disturbance was

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<sup>12</sup> In *Briscoe*, a waitress did testify that, when the police were called, they were asked "to come get them" (R. 31). Since the bus driver made the call, it was apparently he who made this request. There is no evidence that he, or the waitress, had authority to have petitioners removed from the restaurant.

foreseeable and whether a disturbance occurred. The only possible basis upon which the court could have found that these elements of the crime were satisfied is judicial notice or a ruling that the existence of the necessary elements involves a question of law rather than of fact.

1. The trial court found in all three cases that petitioners' actions would foreseeably alarm and disturb the public (see *supra*, p. 23). Since no evidence was introduced to support this conclusion, it necessarily must have depended upon the court's taking judicial notice that, if Negroes publicly occupy facilities reserved for whites, public alarm or disturbance will foreseeably occur. As stated above (pp. 25-26), we do not believe the courts may take judicial notice of facts which are doubtful and, particularly, as in these cases, where they are contradicted by the record. While this is true generally, it is the more important when the effect is to impose racial discrimination. If the Louisiana courts can properly take judicial notice that a disturbance of the peace is foreseeable as a matter of law, without proof, whenever racial integration occurs in public places, the result is a State-imposed or, at the least, strongly encouraged, rule of segregation. As Mr. Justice Stewart stated in his concurring opinion in *Burton v. Wilmington Parking Authority*, *supra*, 365 U.S. at 726-727:

\* \* \* In upholding Eagle's [a restaurant] right to deny service to the appellant solely because of his race, the Supreme Court of Delaware relied upon a statute of that State which

permits the proprietor of a restaurant to refuse to serve "persons whose reception or entertainment by him would be offensive to the major part of his customers \* \* \*." *There is no suggestion in the record that the appellant as an individual was such a person.* The highest court of Delaware has thus construed this legislative enactment as authorizing discriminatory classification based exclusively on color. Such a law seems to me clearly violative of the Fourteenth Amendment. \* \* \* [Emphasis added.]

2. The trial court found that a disturbance had actually occurred only in the *Garner* case. While there is no evidence to support this determination, a court could not properly take judicial notice that a disturbance in fact occurs whenever Negroes publicly enter places reserved for whites. But even if an assumption so contrary to common experience were generally permissible in criminal cases, it could not be permitted when it would impose racial discrimination. Thus, just as a State cannot take judicial notice that a disturbance is foreseeable when whites and Negroes occupy the same public facilities (*supra*, pp. 25-26), similarly it violates the equal protection clause of the Fourteenth Amendment to take judicial notice that disturbances actually occur in every such situation.

3. The trial court found in the *Garner* and *Briscoe* cases, although not in the *Hoston* case, that petitioners acted unreasonably (G. 37; B. 39). This determination, which is required by subsection 7, cannot be based on any evidence directly on the point, since none was introduced; therefore, it must

have been based on a conclusion of law. This means that the court concluded that it is automatically "unreasonable" for Negroes to sit in private facilities reserved for whites even though they are not told by the proprietor to leave the premises or even the particular facility. This determination by the State would mean here again that the State was itself engaged in imposing racial segregation. Just as a State cannot consider Negroes automatically "offensive" to white customers of a restaurant in the absence of proof, so a State cannot consider Negroes *ipso facto* unreasonable when they sit at lunch counters normally reserved for whites (see the concurring opinion of Mr. Justice Stewart in *Burton v. Wilmington Parking Authority*, quoted *supra*, pp. 43-44).

C. While Louisiana's disturbance-of-the-peace statute was undoubtedly not enacted to discriminate against Negroes, it is nevertheless unconstitutional when applied so as to justify the arrest and conviction of Negroes as part of a State-imposed policy of segregation. As long ago as 1886, this Court held in *Yick Wo v. Hopkins*, 118 U.S. 356, 373:

\* \* \* whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of the equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. \* \* \*

Similarly, in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352, this Court held:

The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. \* \* \*

When the execution of a law is based upon racial considerations, there is a clear violation of the Fourteenth Amendment. This principal was succinctly stated by Mrs. Justice Harlan, dissenting in *Plessy v. Ferguson*, 163 U.S. 537, 554-559:

Our Constitution is color-blind \* \* \*. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. \* \* \*

Race can never be made a factor in law enforcement without denying equal protection. State action which promotes a State policy of segregation and, therefore, violates rights protected by the Constitution is not saved by using the label "disturbance of the peace."

#### IV

**IN *BRISCOE V. LOUISIANA*, PETITIONERS' ARREST AND CONVICTION VIOLATED THE INTERSTATE COMMERCE ACT**

**A. THE INTERSTATE COMMERCE ACT PROHIBITS DISCRIMINATION BASED ON RACE IN INTERSTATE BUS TERMINALS**

Section 216(d) of Part II of the Interstate Commerce Act, 49 U.S.C. 316(d), provides that:

<sup>12</sup> See Note, *The Right To Nondiscriminatory Enforcement of State Penal Laws*, 61 Col. L. Rev. 1108 (1961).



\* \* \* It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person \* \* \* in any respect whatsoever; or to subject any particular person \* \* \* to any unjust discrimination or unreasonable prejudice or disadvantage in any respect whatsoever \* \* \*.

In *Boynton v. Virginia*, 364 U.S. 454, the Court held that this provision forbids racial discrimination against interstate passengers in terminals and restaurants operated "as an integral part of the bus carrier's transportation service for interstate passenger" (*id.* at 463-464). Since "[t]he Interstate Commerce Act \* \* \* uses language of the broadest type to bar discriminators of all kinds" (*id.* at 457), we submit that none of the differences between the instant case and *Boynton* justifies different results.

Petitioners in the instant case were students in Baton Rouge and were therefore apparently not interstate passengers. This Court, however, did not rely in *Boynton* upon the status of the defendant as an interstate passenger. For whether the customer himself was an interstate passenger is irrelevant under 49 U.S.C. 316(d); that section forbids interstate carriers to discriminate against "*any* particular person" (emphasis added).<sup>14</sup> The only way the 'restau-

<sup>14</sup> The power of Congress to prevent discrimination of all kinds in interstate terminals is beyond doubt. This Court has held that even if "activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Wickard v. Filburn*, 317 U.S. 111, 125.

rant could distinguish between Negro interstate passengers and intrastate passengers or non-passengers would be to require Negro customers to demonstrate their interstate status before they use the facilities open to interstate passengers without discrimination. White customers would not be required to do so since the restaurant open to white intrastate passengers and non-passengers is the same for white interstate passengers. Thus, if the restaurant in this case could refuse admission to Negroes other than interstate passengers, the effect would be to discriminate against Negro interstate passengers vis-à-vis white interstate passengers by requiring only the former to show their tickets. See *Baldwin v. Morgan*, 287 F. 2d 750, 759 (C.A. 5).

The lunch counter involved in *Briscoe* was located in the Greyhound Restaurant in the Greyhound bus terminal in Baton Rouge. The information charged petitioners with refusing "to move from a cafe counter seat at Greyhound Restaurant \* \* \*" (B. 1); the waitress who refused service to petitioners testified that she was employed at the "Greyhound Bus Station" (B. 30); and one of several bus drivers in the restaurant called the police (B. 33). This Court could properly take judicial notice that the Greyhound Company is an interstate motor carrier and that the Baton Rouge station is an interstate terminal. It can fairly be inferred, in the absence of evidence to the contrary, that a restaurant called the Greyhound Restaurant located in a Greyhound Sta-



tion is operated as an integral part of interstate commerce. In these circumstances, the *Boynton* case holds that the Interstate Commerce Act prohibits racial discrimination.

**B. THIS CONTENTION CAN PROPERLY BE CONSIDERED BY THIS COURT  
EVEN THOUGH PETITIONERS HAVE NOT PRESENTED IT**

Petitioners in the Louisiana courts, as in this Court, have raised only constitutional questions and have not argued that their rights under the Interstate Commerce Act were violated. Nevertheless, we submit that this issue can be considered by this Court. Just as in *Boynton v. Virginia*, *supra*, where the petitioner did not raise this issue in his petition for certiorari and before the state courts argued only a "closely related" issue, there are here "persuasive reasons . . . why this case should be decided, if it can, on the Interstate Commerce Act contention . . . ." (364 U.S. at 457).

We submit that this Court cannot be forced to consider constitutional issues merely because the petitioners in *Briscoe* failed to raise their statutory arguments. The Court will necessarily decide one or more constitutional issues in the *Garner* and *Hoston* cases for in those cases the lunch counters were not located in bus terminals and therefore the contention under the Interstate Commerce Act is not available. But if the Court decides that the arrest and conviction of the petitioners in *Garner* and *Hoston* is invalid on the basis of a particular constitutional contention, but decides (contrary to our arguments above) that this contention does not apply to

the petitioners in *Briscoe* because of the particular facts of that case, the Court should not be required to decide for or against the petitioners in *Briscoe* under the various other constitutional contentions. It seems entirely appropriate for the Court, before going on to the other constitutional issues, to determine whether petitioners' statutory rights under the Interstate Commerce Act have been violated.

Unless the Court can consider statutory issues despite the failure of the parties to raise them, the parties have the power to force the Court to decide constitutional issues even though there is a dispositive non-constitutional issue. This would allow the parties to nullify this Court's historic refusal to adjudicate constitutional questions except where such an adjudication is absolutely necessary to the decision. See the concurring opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 345-348. In particular, this Court has held that "if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." *Id.* at 347; *Siler v. Louisville & Nashville R.R. Co.*, 213 U.S. 175, 191; *Light v. United States*, 220 U.S. 523, 538.

In circumstances similar to those involved here, this Court in *United States v. C.I.O.*, 335 U.S. 106, 110, refused to consider the constitutional issues. There, the defendants challenged the Federal Corrupt Practices Act and the indictment under it on several constitutional grounds but raised no claim in the trial

court that the indictment failed to charge an offense within the scope of the statute (see R. 7-13 in No. 695, Oct. Term 1947). Moreover, only the constitutional issues were raised in this Court. Nevertheless, the Court stated that it passes on the constitutionality of statutes only "in cases of logical necessity," which it found was not present because the indictment did not charge an offense. Thus, even though the parties had raised only constitutional issues, the Court concluded that a non-constitutional issue was dispositive and refused to consider the constitutional questions.

We submit that, if the constitutional issue which is conclusive for petitioners in *Garner* and *Hoston* is not found to be conclusive for petitioners in *Briscoe*, the Court may and should consider the non-constitutional question whether the latters' rights under the Interstate Commerce Act were violated. Since, we believe, petitioners' rights under the Act were in fact violated, the Court will thereby be relieved of deciding any further constitutional issues.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of the Supreme Court of Louisiana should be reversed.

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**SEPTEMBER 1961.**

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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1961

No. 26

JOHN BURRELL GARNER, ET AL., PETITIONERS  
v.

STATE OF LOUISIANA, RESPONDENT

No. 27

MARY BRISCOE, ET AL., PETITIONERS  
v.

STATE OF LOUISIANA, RESPONDENT

No. 28

JANNETTE HOSTON, ET AL., PETITIONERS  
v.

STATE OF LOUISIANA, RESPONDENT

**ON WRITS OF CERTIORARI TO  
THE SUPREME COURT OF LOUISIANA**

**Brief on Behalf of Respondent  
State of Louisiana**

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**ON WRITS OF CERTIORARI TO  
THE SUPREME COURT OF LOUISIANA**

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**Brief on Behalf of Respondent**

**State of Louisiana**

---

**STATEMENT OF THE CASE**

On March 30, 1960, these defendants and/or others similarly situated picketed several business establishments in Baton Rouge in protesting the segregation customs of the owners of those stores. Thereafter, on that same day, these defendants and/or others similarly situated marched, in a crowd,

down the main street of Baton Rouge in a "march on the State Capitol" for the sole purpose of engaging in a demonstration protesting the segregation customs of the people of the State of Louisiana. These demonstrations, although protected by the police department of the City of Baton Rouge, were witnessed by a great number of citizens of the City of Baton Rouge. Tension between the two races was high.

In the few weeks, and months, immediately preceding March 28, and March 29, 1960, members of the Negro race in other cities throughout the south had engaged in "sit-in demonstrations". In almost every instance of the staging of a militant "sit-in demonstration" violence had occurred with resulting fist fights between members of the two races. Every citizen of Baton Rouge, including these defendants, were aware of these "sit-ins" and the violence which they had caused.

Every responsible citizen of the City of Baton Rouge was concerned over the possibility of violence, blood shed, and mob violence facing our normally law abiding and peaceful community.

On the evening of March 29, 1960, when it was first learned that the "march on the capitol" demonstration was to take place the next morning, responsible public officials advised law enforcement officers not to interfere with these people if they commenced a demonstration on the public streets of the City of Baton Rouge either by picketing business establish-

ments or by marching on the capitol and whether carrying signs or not, as long as they did not block traffic or prevent the normal use of the streets by other persons also entitled to their use. They were further instructed *to not let* any other person interfere with these demonstrators. Consequently, on March 30, 1960, the demonstrators picketed and demonstrated the entire length of the main business street of the City of Baton Rouge, ending their demonstration in a mass meeting on the steps of the State Capitol, with their right to lawfully demonstrate in this manner at all times protected by local law enforcement officials.

But, was this lawful manner of demonstrating and expressing themselves sufficient?

No, the right to freely express themselves in a place where they had a right to do so was not sufficient for these defendants. On March 28 and 29, 1960, these defendants had entered the respective private business establishments herein involved to force their demonstrations on private individuals on their own private property. (R. Hoston 7; R. Garner 6; R. Briscoe 8)

In each of these cases, the defendants were told in clear unmistakeable language, which could have no other meaning under the circumstances, to cease and desist from this unlawful activity, that is, engaging in an "activity . . . to protest segregation" and, "in protest of the segregation laws of the State of Louisiana, . . . 'sit-in' a cafe counter seat . . . " (R.

Hoston 7; R. Garner 6; R. Briscoe 8) These defendants were all told, in language unmistakably clear under the circumstances, that they would not be served food or drink at the counter at which they were seated but that they would be served at another counter designated by the owner. In other words, they were told in clear unmistakeable language that if they were in the store for normal business purposes they could carry out those purposes by going to the counter pointed out to them by the manager or waitress involved in each particular instance, but that they would not be served while engaging in such demonstration in the particular area of the store at which they were. They refused to leave the area at which they would not be served and refused to go to the area pointed out to them by the manager or employee who had full legal authority to require them to go to that particular area of the store.

If we examine pages 29 and 30 of the record in the Hoston case, we find the manager of the store testifying that "something unusual happened on March 28"; that he told his waitress to "offer service at the counter across the aisle"; that they were "seated at the counter reserved for white people"; that they were not served there and that they were "advised that we would serve them over there" (other counter); that they did not go over there but "continued to sit"; that he went to the telephone and called the police department because "I feared that some disturbance might occur" . . . because it isn't customary for the two races to sit together and eat together

. . . at Kress' . . . that this was the "custom of the store" and that that custom was prevailing when he got there a year and a half before. And on page 36 of the record you have the law enforcement officers asking them, not once, but twice, to move on, and their refusal to do so, before they were arrested.

In the Garner case, you have the owner of Sitman's Drug Store, Mr. Willis, testifying that he was the sole owner of Sitman's Drug Store and the sole owner of Sitman's Restaurant and Cafe, two separate establishments; that although he served both Negroes and Whites in his drug store, he served only Whites in the cafe as a matter of personal policy and choice to him; that this had always been his policy and choice; that these defendants entered the cafe and seated themselves at the counter and were told by him that they would not be served; but the defendants remained seated; the law enforcement officer asked them to leave and only after they again refused to leave were they arrested. That these defendants knew of the policy of this private businessman on his own private property is made clear by his answer to the question propounded by counsel for defendant on page 32 of the record:

Q. For what reason did you refuse to serve these defendants?

A. As a matter of policy I have *never* invited colored trade, Negro trade in the restaurant, as a matter of policy. I don't have the facilities. I have facilities for only one race, the White race. (emphasis supplied)



In the Briscoe case, on pages 30 and 31 of the record, the waitress, Miss Fletcher, testified that these defendants came in and sat down at the counter and that she told them they would have to go to the other side to be served. She testified further on page 31 that "they came here and said they wanted something and I told them that they would have to go to the other side to be served, and they just kept sitting there and so we called the police and told them to come get them." She also testified that the police said that "they said they would give them a chance to get up and go or either they would have to go to jail" she also testified as follows:

Q. And you told them you couldn't serve them and asked them to move, is that correct?

A. Yes sir.

Q. And when they refused to move you called the officers?

A. Yes sir.

She also testified when questioned by the Court as follows:

Q. As I recall your direct testimony you stated, and if I am not correct, correct me, that after they ordered the food you told them that you couldn't serve them, that they had to go over to the other side reserved for colored people, is that right?

A. Yes sir, that's right.

Q. Did they go over there?

A. No sir.



Q. Did they refuse to go?

A. Yes sir, they just sat there . . .

Q. Was there a place reserved for colored people in this same building?

A. Yes sir . . .

Q. Was it adequate to serve these people, was it large enough to serve these people?

A. Yes sir.

And again when the police officer was called he testified as follows, as shown at page 35 of the Briscoe record:

Q. Anyway what, if anything, did you do?

A. Well, Inspector Bauer talked to one of the group.

Q. Did you hear what was said?

A. No. And then he talked to them the second time and then he told them that they were under arrest . . .

Q. Did you ask them to move?

A. We did.

Q. You gave them an opportunity to get up and leave?

A. That's right.

Q. And did they?

A. No.

Q. Were they all together?

A. That's right.

And again on page 37 and 38 of the record the officer testified as follows:

Q. "But what I want to clear up, I think it is fairly clear but I want to go over it again, you requested these defendants to leave the counter or the stools that they were sitting on before you arrested them?"

A. That's right sir.

Q. And they refused to leave?

A. That's right.

Q. And that's when you made the arrest?

A. That's right.

These defendants were then ultimately found guilty as charged by the Court and ultimately arrived before this Court on Writs of Certiorari.

## ARGUMENT

### I.

There was and is evidence of conduct which would foreseeably and unreasonably disturb or alarm the public and this Honorable Court should not substitute its judgment for that of the jury, or Trial Court, as to whether such evidence was sufficient to return a verdict of guilty rather than not guilty.

In our Brief in Opposition to the Application for Writ of Certiorari which was previously filed, we discussed the various legal questions and defenses raised by these defendants from the standpoint of the applicable case law. In the interest of space and time we would here re-adopt by reference each and

every argument submitted in our Brief in Opposition. In addition, the concluding portion of this brief will discuss, from the standpoint of applicable case law, the additional points and re-worded arguments submitted in defendants' brief and the various amicus curiae briefs filed in their behalf by the Committee on the Bill of Rights of the Association of the Bar of the City of New York and by the United States Government.

At this point, respondent would attempt to put these cases in their proper perspective from a factual point of view. By argument and language, counsel for defendants have attempted to turn this case into a great segregation Civil Rights matter when in fact it really is not. **THE ONLY REAL ISSUE IN THESE THREE CASES IS WHETHER OR NOT A NORMALLY PEACEFUL AND LAW ABIDING COMMUNITY FACING AN EXPLOSIVE SITUATION IN WHICH RACIAL TENSIONS ARE AT AN ALL TIME HIGH, CAN PRESERVE THE PEACE AND ORDER OF THE COMMUNITY BY HAVING ITS LAW ENFORCEMENT OFFICERS ORDER PERSONS CREATING THE EXPLOSIVE SITUATION TO CEASE AND DESIST FROM SUCH ACTION AND ARREST THEM IF THEY REFUSE TO DO SO.**

To put these cases in their proper perspective they must be viewed in the true light of the circumstances surrounding them. Throughout the last part

of 1959 and the early part of 1960, immediately preceding these demonstrations, the leaders of the Negro movement to do away with all segregation, in the nation, whether public or private, abandoned their previous legal mode of attack to embark upon a militant campaign throughout the South to invade private property and harass the proprietors of private business establishments into de-segregating their facilities whether they wanted to or not. These "sit-in demonstrations" occurred in major cities throughout the South. In almost every instance where local law enforcement authorities did not act quickly, violence, to a greater or lesser degree, occurred. A rather complete history of this militant campaign is given in an article in the *1960 Volume of the Duke Law Journal*, No. 3, from which we will trace their history.

"On February 1, 1960, four Negro students at North Carolina A & T College in Greensboro, North Carolina, decided to do something about this alleged unequal treatment. They went to a dime store in an alleged attempt to get coffee. The manager said he could not serve them because of local custom, so they just sat and waited. The only trouble that first day came from the Negro help who came out of the kitchen to tell the boys, now known on their campus as the "Four Freshmen", that they were doing a bad thing. Other students from the college were shopping in the store at the time and when the Four Freshmen returned to the campus 20 students volunteered to join them for the next afternoon. "Ground rules were drawn by the expanded group. . . . Again, Tues-

day they were refused service. They just sat. On Wednesday and Thursday, they returned, in greater strength each time. The A & T students were joined by many students from the Negro Bennett College and also by a few students from the Women's College of the University of North Carolina, both located in Greensboro. By Friday, white teenagers had begun heckling the demonstrators. On Saturday the Woolworth store was jammed with Negroes and Whites. The Negroes mostly sat, while the white boys waved Confederate flags chanted and cursed. Around mid-afternoon the management received a bomb threat, and the police emptied the store. When the store opened Monday, the lunch counters were closed. Dr. Gordon Blackwell, Chancellor of the Women's College, proposed a "truce period" which was accepted to work things out in a less inflammatory atmosphere. Thus ended temporarily the Greensboro demonstrations; but by that time, Negro students were demonstrating in Winston-Salem, in Durham, in Charlotte and the other principal North Carolina cities. *The demonstration in its origin was student inspired and directed. Subsequently, organizations such as the National Student Association. The Congress of Racial Equality, and the National Association for Advancement of Colored People offered their guidance and sponsorship.* In some instances, the help of these organizations was accepted; in other instances, the students desired to go it alone." *Daniel H. Pollitt, Dime Store Demonstrations; Events and Legal Problems of First Sixty Days; Duke Law Journal No. 3, Volume 1960.* This

was only the beginning. And yet there was violence on the very first attempt of these people to invade the private property of others. As the movement increased and became more militant, so correspondingly did the violence increase.

Continuing with Dr. Pollitt's rather thorough chronological exposition of this militant campaign, we note the following at page 319:

"... the demonstrations moved Northward into Virginia and West Virginia; South into South Carolina, Georgia and Florida; Kentucky, Alabama, Louisiana, Arkansas and Texas. Pickets even appeared before those stores in restaurants in Ohio which violated the state eating accommodation laws by denying service to Negroes. The Raleigh News commented that with the arrest of demonstrators in that city, 'the picket line now extends from the dime stores to the United States Supreme Court and beyond to national and world opinion'".

*It should be noted here that though the above quotations referred to picket lines that such is not the situation in the present cases. In fact the right of these persons, and those similarly situated, to otherwise freely express themselves in a place where they had a right to be was affirmatively maintained by the law enforcement officials of the City of Baton Rouge on the day immediately following their invasion of private property. Dr. Pollitt then goes on to cite the extremely wide press coverage given these demonstrations including Eastern Europe and Russia. He mentions*



the many nationally known figures who spoke out in support of such demonstrations and whose remarks was given widespread newspaper coverage such as the Rev. Dr. Billy Graham, Mrs. Franklin Roosevelt, United Auto Workers President, Walter Reuther, Florida's Governor Leroy Collins, and various church and university organizations. The comments and publicity which followed these demonstrations was widely publicized throughout the South and increased racial tensions in each and every community in the South.

To briefly follow the route of these militant, well organized demonstrations, State by State, as they swept across the South, we again quote from Dr. Politt's article.

## **ALABAMA**

"The demonstrations reached Alabama on February 25, when 35 Negro students from Alabama asked for service in the Montgomery County Courthouse Snack Shop.... On February 27, a Negro woman was attacked by one of the group of 25 whites who patrolled the streets carrying miniature baseball bats inside paperbags. . . . On March 1, a thousand Negro students sang the National Anthem on the Capitol steps, . . . On March 2, nine Negro students were ordered expelled for taking part in a demonstration, . . . On Sunday March 6, approximately 800 Negroes left their churches for a demonstration prayer meeting at the State Capitol grounds. A jeering mob of whites charged the marchers, and a riot was narrowly averted



when the police separated the two groups, and mounted deputies and fire trucks moved in to prevent further violence. *Pollitt, Duke Law Journal, No. 3, Volume 1960, page 323 and 324.*"

## ARKANSAS

"Arkansas joined the list of Southern states hit by demonstrations on March 10, when about 45 students from Philander Smith College entered a Little Rock variety store and sat down at a white lunch counter. The incident ended without violence when Police Chief Gene Smith recommended closing the counter." (Note: *No violence but the proprietor had to give up his rights.*) *Pollitt, page 325.*

## FLORIDA

"The demonstrations began in this state on February 26, with a sit-in in Tallahassee. . . . Ten days later, forty Negro youths staged a sit-down protest at a Tampa Woolworth lunch counter. The counter was closed without incident." (Note again the proprietor giving up his rights). . . . "On March 4, eight ministers tried to enter a lunchroom in Miami's Burdine's Department Store, but were blocked by store employees. A cross was burned in front of a Negro home in Pensacola. . . . On March 12, demonstrations reached Jacksonville. Eight Negroes sat down at the lunch counter of a Kress' Dime Store. The counter was closed." (Again the proprietor gave up his right to conduct his normal business). . . . "On the same day, there was near violence in Tallahassee. A group of Negro and white demonstrators at a Woolworth store were arrested, replaced by another group that was arrested, and

by a third group that was arrested," (*Notice the similarity to a military battle, one assault wave after another*) . . . "Shortly after noon, a crowd of about 125 Negroes gathered at a park across the street from the police station and started down the block toward the Woolworth store. Half way there they were met by a group of white men, turned and started back to their campus, while the whites followed with taunts and jeers." (*Near violence*) . . . "On March 17, a group of eight students entered the Woolworth store in St. Augustine, the counter was closed, and when the Negroes left, they were attacked by a group of white men. Police called a cab to take the Negroes away, and the Chief of Police, armed with tear gas, ordered the crowd to disperse." (*Violence and tear gas, armed police*) Pollitt, *Duke Law Journal*, Vol. 1960, pages 325 and 326.

## GEORGIA

" . . . On March 10, seven Negroes took seats in a white section of a municipal auditorium during a stage show. There was a brief verbal clash that ended when police designated the occupied section Negro. On March 15, approximately 200 students in Atlanta staged simultaneous sit-ins at noon time at the lunchrooms of the State Capitol, the Courthouse, the City Hall, the bus stations, the railway station, two office buildings housing Federal offices, and a variety store." (*Such an all out assault could not have been carried on without a complete and effective organization almost military in its nature.*) . . . "On March 16, there was a "sit-in" in Savannah, and on March 17, following a big St. Patrick's Day parade, there were scattered fist fights and rock

throwing between groups of whites and Negroes."  
*(Violence once again)*

## **NORTH CAROLINA**

As North Carolina has been covered in our initial discussion we will not go into it further at this point.

## **SOUTH CAROLINA**

"In this state the demonstrations began on February 23 in the City of Rockhill when 100 Negro students from Friendship College staged a sit-in in two variety stores. . . . On March 3, approximately 200 Negro students marched around in the Columbia downtown area for nearly two hours. They were heckled by white youths and left at the request of the city manager who wanted to avoid "*an explosive situation*" . . . On March 15, approximately 1,000 demonstrators from Chafin and South Carolina State Colleges converged at noon in Downtown Orangeburg to protest lunch counter segregation. The police met them with tear gas and fire hoses." *(Emphasis added). Pollitt p 331.*

## **TENNESSEE**

"Chattanooga was the scene of the first Tennessee demonstration, when Negro high school students staged a sit-in in the Kress store. *Rioting broke out* when whites, mostly students, began throwing flower pots, dishes, bric-a-brac, and other merchandise in the store. One white youth grabbed a bull whip from the store stock and used it on a Negro. The Negroes retreated through the streets to a Negro section of the city, *with bricks and other objects being hurled*

by both sides. After the fighting had subsided, white youths walked through the aisles of the Kress and other stores, jeering at Negro customers and frightening many into leaving. . . . Seven whites were arrested, the police concentrating on the leadership." (*Notice again that the arrests for disturbing the peace or causing the violence are indiscriminate as to color*). . . . "The demonstrations then spread to Nashville. A white youth was sitting with a group of Negroes at a dime store lunch counter when a second white youth walked in, called him a \_\_\_\_\_, and twisted his collar. The assailant then fled, but returned five minutes later. This time, he grabbed the sitting white youth, threw him on the floor, and kicked him. The police then ordered everybody to leave the counter. Eleven Negroes who refused to comply were arrested." (*It is worth noting here that arrests were made only after violence and requests for everyone to leave and the only persons arrested were those who refused to leave.*) . . . "Two days later, fifty-five more Negro students were arrested, this time for refusing to leave the lunch counter at the Greyhound bus station when the Assistant Fire Chief asked all persons to leave the building while a search for a bomb was made. . . . Two weeks later, shortly after the Nashville bus station served Negroes in the white restaurant, two dynamite caps—but no dynamite—were found in the washroom. Pollitt, *Duke Law Journal*, Vol. 1960, No. 3, pages 332-334." (Emphasis added)

## TEXAS

"The demonstrations in Texas resulted in extremes—either of violence or of peaceful settle-

ment. The sit-ins began in Houston, mostly by Negro students from Texas Southern University, with immediate repercussions. A Negro drug-store porter was slashed by a white youth with a knife, and three masked white men seized another Negro, flogged him with a chain, carved the insignia of the Ku Klux Klan on his chest and stomach, and hanged him by his knees in an oak tree. In the east Texas city of Marshall, demonstrations began on March 27, . . . On March 30, . . . about 200 Negroes gathered near the courthouse and began to sing "God Bless America" and similar songs. The firemen then arrived and turned powerful streams of water into the crowd. Hoses drenched West Houston Street, which leads to Marshall's two all-Negro colleges . . . In contrast with the situations in Houston and Marshall is that in San Antonio. Through the intervention of the Rev. C. Don Baugh, executive director of the San Antonio Council of Churches, downtown dime stores agreed to serve Negroes . . . In Galveston, too, lunch counters were voluntarily integrated and Negroes started eating beside whites without incident." *Pollitt*, p. 334-335.

## VIRGINIA

"The demonstrations began in Richmond with a sit-in at the restaurant in Thalhimers department store. Thirty-three participants were arrested, which prompted a picket line urging a boycott . . . The protest demonstration ran a course similar to that in other states. *Pollitt*, *Duke Law Journal*, 335-336.

And again to quote Dr. Pollitt at page 336 of his

exposition, " 'the determination that underlines the movement has been demonstrated from Alabama to Virginia' comments the New York Times." "Negroes have risked fines and jail sentences, attacks from angry Whites, and, in at least one case, possible death at the hands of a mob."

The purpose in quoting from Dr. Pollitt's exposition is not to try to assess the blame for any particular incident of violence in any of the communities in which it occurred on either the white race or the colored race in that particular community. The purpose is to show the very thorough campaign that was carried on throughout the Southern states in the brief two months prior to the incident occurring in Baton Rouge, Louisiana. It is also to point out that where arrests were made by the local law enforcement officers early and quickly, no violence occurred, but where local law enforcement officers stood by and allowed the demonstrations on private property to continue, violence eventually occurred. Another purpose in quoting these incidents is to show that the right of these people to freely express themselves by picketing, marching through the public streets, marching on the courthouse, etc., *freedom of expression where they had a right to freely express themselves*, was in most cases not only not interfered with, but was protected. Such was the case in Baton Rouge as shown by the statement of the case.

Again, to show the militant nature and organization of these sit-in demonstrations, we would quote at some length from the article entitled "The Strategy



of a Sit-in" by C. Eric Lincoln in the *January 5, 1961, issue, Volume 24 No. 1 of the Reporter* magazine, pages 20-23. Although the writer of the article obviously supports these sit-in movements, his description of such movement is certainly well worth noting. For example, his article is broken into sections as follows: (1), First Skirmishes; (2), Logistics and Deployment; (3), All Right Lets Go; and (4), Allies and Morale. We will quote at some length to give an idea of the development of the sit-ins campaign as conducted in Atlanta.

"... "What came to be referred to as the 'fall campaign' got under way immediately after the re-opening of the colleges in mid-September. This time the main sit-in targets were in the heart of Atlanta's shopping district. Because of its size and its alleged 'leadership' in the maintenance of segregated facilities, Rich's became once again the prime objective . . . By Friday, October 21, hundreds of students had launched attacks in *co-ordinated waves*. Service to *anyone* at eating facilities in the stores involved had all but ended, and sixty-one students, one white heckler, and Dr. Martin Luther King were all in jail. Negotiations between the merchants and the Students-Adult Liaison Committee were promised on the initiative of the mayor. When the truce ended thirty days later, no progress had been made in settling the impasse, and on November 25, the *all out attack* was resumed. By mid-December, Christmas buying was down sixteen per cent—almost \$10 million below normal.



Both the Atlanta police and the merchants have been baffled by the students' apparent ability to appear out of nowhere armed with picket signs, and by the high degree of co-ordination with which *simultaneous attacks were mounted* against several stores at once. . . . The secret of their easy mobility lay in the organization the students had perfected in anticipation of an *extended siege*.

Much of the credit for the development of the organizational scheme belongs to \_\_\_\_\_ who is the recognized leader of the student movement in Atlanta, and his immediate "*general staff*" . . . its *executive officer* has the rather whimsical title of "*le Commandante*". The headquarters of the movement are in the basement of a church near the University Center, and (*le Commandante*), arrives there promptly at seven o'clock each morning and goes through a stack of neatly typed reports covering the previous day's *operations*. On the basis of these reports, the *strategy* for the day is planned. . . . Meanwhile, *the Commandante and his staff* are in conference. . . . *Deputy Chief of Operations* . . . will have arrived, as will a fellow student, . . . who serves as *field commander* for the committee. . . . Telephoned reports from *Senior Intelligence Officer* . . . (already at his post downtown), will describe the nature of the flow of traffic at each *potential target*. . . . A large map dividing the downtown district into five areas is invariably consulted and an *Area Commander* is appointed for each operational district. Assignments fall into three categories: pickets (called

by the students "picketeers"), sit-ins, and a sort of flying squad called "sit-and-runs." *The objective of the sit-and-runs is simply to close lunch counters by putting in an appearance and requesting service. . . .* By now it is nine or nine-thirty and transportation has arrived. . . . The *Deputy Commander* provides each driver with a *drivers orientation sheet* outlining in detail the route to be followed by each driver, and the places where each of the respective groups of students are to be let out. The *Area Commanders* are given final instructions concerning the *synchronization of the attack*, and the cars move off, following different routes into the city. . . . Meanwhile, *Field Commander . . .* is checking a *communications code* with \_\_\_\_\_, or one of the five other licensed radio operators who man a *short-wave radio set* up in the church nursery. When this has been attended to, *Commander \_\_\_\_\_* climbs into an ancient automobile equipped with a *short-wave sending and receiving unit* and heads for the downtown shopping district. He is accompanied by \_\_\_\_\_, whose job it will be to man the *mobile radio unit. . . .*

Reports from the *Field and Area Commanders* begin to trickle in by radio and telephone. As the lunch hour nears, the volume of reports will increase to one every two or three minutes. . . . Here are two actual reports taken from the files and approved for publication by the *Security Officer*:

11-26-60

11:05 A.M.

From: Captain \_\_\_\_\_

To: le Commandante

Lunch counters at Rich's closed. Proceeded

to alternative objective. Counters at Woolworth's also closed. Back to Rich's for picket duty. Ku Klux Klan circling Rich's in night-gowns and dunce caps. "Looking good!"

(Emphasis throughout added)

The above quoted portions from this article should be sufficient to show that regardless of the statements of the leaders of some of these and other movements about "passive resistance" etc., these movements are anything but passive. They are well organized and well supported financially. No reasonable man can read the examples cited by Dr. Pollitt, the militant campaign described by Mr. Lincoln, and know of the high degree of racial tension which exists throughout the South, without coming to the conclusion that it is entirely foreseeable that these demonstrations can disturb and alarm the public and result in violence. Must the individual communities throughout the South, and for that matter, the nation, wait until violence occurs and mobs run rampant before taking action? Or may they profit by the experience of other cities and protect the rights of these people when they are demonstrating where they have a right to demonstrate and order them to cease and desist when they are demonstrating on private property where they have no right to do so?

Counsel for defendants and the Federal Government, in argument in their brief, object to the City of Baton Rouge foreseeing violence in these demonstrations. But how can you read the history of these demonstrations, the history of this militant movement

from the time it began some short two months before these cases arose, and thereafter, without foreseeing violence as a result thereof. There is only one possible way to eliminate the probability of violence from these demonstrations. And that is for the private property owner to completely relinquish his right to refuse admission to his property to other people for whatever reason he might have, and particularly for an unwanted demonstration. In the absence of his doing so, there are only three possible results, (1), that these people continue to occupy seats which would normally be used by other patrons of his business, thereby interfering with his business and a transgression against his own civil rights; (2), violence, resulting from the proprietor attempting to forceably evict these people or other people attempting to use the seats which these people have taken and which, according to the proprietor, his other patrons have a right to use; or (3), their being forceably removed and/or arrested by local law enforcement authorities in a proper effort to protect the rights of its citizens and avoid violence and disorder in our community.

And furthermore, if violence is not foreseeable as a result of these "sit-ins" "freedom rides", etc., why does the Federal Government send hundreds of Federal Marshalls into Montgomery, Alabama, Jackson, Mississippi, and New Orleans, Louisiana? The Government took the position that discrimination in bus stations and railway stations in Montgomery, Alabama, was unlawful and it therefore called upon the law enforcement officials of Montgomery, Ala-

bama, to arrest any one who interfered with the exercise of the right of the defendant to go where he chose in such interstate facility. And when the government felt that the Montgomery law enforcement officials could not cope with the situation, and foresaw possible violence as a result thereof, the government sent several hundred Federal Marshals to Montgomery for the express purpose of preventing violence. Yet, in the instant three cases, the government cites no authority, no law, no constitutional provisions, and no case that says these defendants have a right to demonstrate on private property or have a right to remain on private property after being told they would not be served and asked to leave. In other words, the government felt a responsibility to protect the rights of these Negro people under the Interstate Commerce Act, and to prevent violence, and it moved immediately with its law enforcement officials to do so. Why does it not feel the same responsibility to protect the rights of other citizens or, at least, not oppose the protection of those rights, and the prevention of violence, by the City of Baton Rouge?

So then, we come to Baton Rouge, Louisiana, on the morning of March 28, 1960. For the preceding month and a half the newspapers had been carrying story after story of the sit-in demonstrations and resulting violence in other cities. Headline stories of one group of people violating the property rights of another group of people and being supported therein by outstanding national figures and the Federal

Government. Stories of people refusing to leave another individual's property after having been requested to do so, the type of conduct which is, to the people in Baton Rouge, completely unlawful and a direct affront to their normally law abiding nature. Couple this with already inflamed emotions and high racial tension which has become increasingly worse since 1954. What were responsible citizens and officials charged with the responsibility of preserving peacefulness and law and order in the community to do? Were they to order the proprietors of private businesses to open their doors to these people to permit them to come in even though they did not wish them to do so? Should they have arrested these proprietors if they refused to allow these people to come in? Hardly, because there was no legal authority for them to do so. What then? Must they have waited until violence, fist fights, brick throwing, etc. finally commenced? Should they have waited until the proprietor attempted to forcibly remove these people with its resulting violence and possible damage to his store? And if so, who then should they have arrested for disturbing the peace? According to the defendants, it would be the proprietor. But what has the proprietor done, except to exercise his own right to refuse admission and to eject those who refuse to leave when requested to do so? I cannot believe that it is the intention of this Court to tell individual communities throughout the nation that you may not take quick action to prevent violence and disorder in your community by quickly arresting persons engaging in a demonstration on



private property against the owner's wishes, but must instead wait until violence and disorder actually occur. Such a concept turns our civilization back, not hundreds, but thousands, of years.

It should be noted at this point that although the stated respondent in this matter is the State of Louisiana, the State is not the real party at interest. The real party at interest in all three of these cases is the City of Baton Rouge, the community of Baton Rouge. Disorderly conduct or mob rioting in the City of Baton Rouge affects no one else in the State of Louisiana. The only people concerned here with keeping the peace, people who would desire to carry on their normal daily activities without being subjected to possible violence and disruption of those activities, are the people living in the local community known as the City of Baton Rouge. What is a local community, whether it be located in the State of Louisiana, Idaho, New York, California or Nevada, to do in these circumstances? A local community in these circumstances has, actually, only three choices: (1), it may sit idly by and allow these persons to possess a portion of the property of another of its citizens, for an unwanted demonstration, against his wishes, until that citizen relinquishes his own rights; (2), it may sit idly by until that private citizen attempts to forceably eject these persons with the resulting violence, and probable spreading of such violence and disorder to its other innocent citizens; or (3), it may act quickly, for the benefit of all of its citizens, to prevent and terminate such illegal demonstrations, before violence and



disorder occur, by ordering these persons to leave the premises and cease and desist from such illegal demonstrations and then by arresting such persons if they refuse to leave at the request of law enforcement officials. It seems obvious to the writer that under the circumstances and conditions so readily apparent in these cases, so readily apparent from the record itself, that the proper course, the more reasonable course, the more prudent course, is to act quickly and preserve the peace, order, and tranquility of the community.

The defendants and the government, by taking isolated answers from the testimony reflected in the record in these three cases, make much of the contention that these defendants were following a normal every day course of conduct in seeking service and that there is no evidence in the record to justify a conviction. However, we respectfully submit, that it is impossible to read *all* of the testimony of the proprietors, managers and employees of the three places of business involved and the sworn motions to quash in which the defendants testify and admit that they were "engaged in an activity to protest segregation" and that they did "in protest of the segregation laws of the state of Louisiana, . . . on the 29th day of March, 1960, 'sit-in' a cafe counter seat . . .", without coming to the inescapable conclusion that there is ample evidence in the record that these defendants were engaged in participating in an unwanted and illegal demonstration on private property against the wishes of the owner and that after

being requested to remove themselves and cease and desist with such demonstration, both by the owner, manager or employee, and police officers, refused to honor such request or obey such direction from the local law enforcement authorities. And, as admitted by the government on page 18 of its brief, "the decision (*Thompson vs. City of Louisville*, 362 U.S. 199, and others cited) does not mean that a Federal Court may reverse a state conviction merely because, upon re-evaluating the record, it finds that the evidence is insufficient to support the conviction." We respectfully submit, that there was evidence in the records to support these convictions and that, therefore, this Honorable Court should not substitute its judgment for that of the jury or trial court, as the case may be, as to whether or not the verdict should have been guilty or not guilty.

Now, with the background of this militant campaign before us, let us look at the situation in the one community involved, Baton Rouge, Louisiana, during these three days of demonstrations. Of course, the Baton Rouge newspapers had been, for the past several weeks, printing the same stories which appear in Dr. Pollitt's article. The Baton Rouge morning paper, the *Morning Advocate*, of Sunday, March 27, 1960, carried the following headline and story:

**"NEGRO PROTESTS SPREAD — PICK-  
ETING, PARADES, AND RALLIES STAGED  
OVER WIDE AREAS."**

"Mass anti-segregation demonstrations in support of Negro lunch counter sit-downs in the South spread across the country Saturday . . .

"Newport News, Virginia, Focal point of the nation-wide demonstration movement which student leaders called '*operation 26*' . . . Sit-down protests occurred in many cities, among them Charleston, West Virginia, and there was picketing in Savannah and Atlanta, Georgia — In Atlanta, a spokesman for CORE (Congress of Racial Equality) said 25,000 leaflets were being distributed urging a boycott of stores with segregation policies . . . More than five hundred persons belonging to CORE and another interracial group posted picket lines at 20 variety stores in the downtown Los Angeles area. *None of the stores have a segregation policy.* They were the latest sympathy protest in the Los Angeles area . . ." (Emphasis added)

On Monday morning March 28, 1960, the Morning Advocate carried the headlines "CROSSES BURNED IN DEEP SOUTH STATES; STUDENTS STAGE DESEGREGATION DEMONSTRATIONS" In the Baton Rouge evening paper, The State Times, of March 28, 1960, the headlines and story were as follows:

**"CROSS BURNINGS ARE REPORTED IN SEVERAL STATES OVER THE WEEK END.**

"The ninth week of anti-segregation demonstrations began in the South today following a week-end of cross burnings.

Hooded klansmen burned crosses in Alabama, Georgia, Florida and South Carolina as students in the North and west joined Negroes in their campaign against separate lunch counter facilities . . . Both white and Negro students supporting the campaign of Southern Negroes picketed stores in State College, Pennsylvania, Iowa City, Iowa, Los Angeles, California and Albany, New York. . . . *A special Mayor's committee said the Nashville incident wiped out three weeks of work to ease racial tensions . . .*

(Emphasis added)

On Tuesday, March 29, 1960, the Morning Advocate carried the following headlines on opposite sides of the page:

**"NEGRO STUDENTS ARRESTED HERE AFTER SIT-DOWNS; GROUP OF SEVEN JAILED, LATER BONDED; SOUTHERN (SOUTHERN UNIVERSITY) RALLY THREATENS BOYCOTT"**

**"CHURCHES BURNED AS AFRICAN AUTHORITIES BATTLE NEGRO MOBS—DEMONSTRATORS FIGHT POLICE, OTHER NEGROES."**

"Great fires set by mobs raged Northeast of Cape Town Monday night as white police battle with Negroes and militant Negroes fought both police and other Negroes. It was the fiery, violent climax to South Africa's "day of mourning".

Again, on Tuesday afternoon, March 29, 1960, the Baton Rouge State Times carried the following headline and story:

**"TWO ARRESTED IN SECOND 'SIT-DOWN' INCIDENT."**

Negro students from Southern University here today continued their sit-down lunch counter demonstrations with an invasion of Sitman's Drug Store at Main and North Third Street . . ."

Then, on Wednesday morning, March 30 of 1960, the Baton Rouge Morning Advocate carried the following headline and sub-headline:

**"THIRD STREET BOYCOTT BY NEGROES URGED AFTER NEW SIT-DOWN CASE. SEVEN MORE STUDENTS ARRESTED HERE; REPORT CROSS BURNING—NEGRO MINISTER ASKS CONGREGATION TO CEASE SHOPPING AT EASTER SEASON"**

And on Wednesday afternoon, March 30, the Baton Rouge States Times carried the following headlines and story:

**"NEGROES MARCH DOWNTOWN; GRAND JURY BEGINS INQUIRY—TWO THOUSAND DESCEND IN MASSE ON THIRD STREET; SOUTHERN UNIVERSITY HEAD PROMISES POSITIVE ACTION AGAINST SOME STUDENTS"**

"Some two thousand Southern University Students marched on downtown Baton Rouge and the State Capitol at 9 A.M. today, and nearly five hours later the Parish Grand Jury began a full scale investigation of a three day series of

Negro demonstrations here . . . and Mayor-President Jack Christian asked citizens of the Parish to keep away from heavily patrolled areas and urged people to 'let your law enforcement agencies take care of this situation' . . . The students, orderly, quiet and obviously well-briefed as to behavior marched on the State Capitol and after picketing briefly the Greyhound Bus station, McCrory's, S. H. Kress & Co. and Sitman's Drug Store at Third and Main . . . Demonstrations reached a peak today after lunch counter sit-downs Monday and Tuesday . . .

Dr. Clark (Dr. Felton Clark, President of Southern University) said in a prepared statement; "*We have consistently advised students against the course of action which a segment of them are now taking . . .*" (Emphasis added)

Mayor-President Christian said in a statement; . . . If the people will refrain from coming to the areas patrolled, it will be much easier to handle the flow of traffic and will keep the congestion downtown to a minimum . . . *The thing that bothers us is that someone may do something violent which of course will make it very difficult for our present forces to handle the situation . . . We are doing our best to prevent any acts of violence or injury to anyone or to anyone's property and so far we have succeeded. . .*

In the midst of the morning demonstration, City Police received a report of a bomb in Sitman's Drug Store, scene of a Negro lunch counter sit-down strike yesterday. The store was closed by police and sidewalks made off limits to pedestrians while a thorough search was made." (Emphasis added)



Finally, the Morning Advocate of Thursday March 31, 1961, at a time when, as far as local authorities knew, these demonstrations were scheduled to continue and to spread, carried the following headlines and stories:

**"SUSPENSION FOLLOWS BATON ROUGE DEMONSTRATIONS; THE THIRD DAY OF UNPRECEDENTED DEMONSTRATIONS AGAINST SEGREGATION BY NEGRO STUDENTS HERE WEDNESDAY . . . "**

On the opposite side of the page there was the following headline:

**"HOSES BREAK UP TEXAS NEGRO DEMONSTRATION."**

**"Firemen turned streams of water into groups of young Negroes late Wednesday to calm a demonstration lunch counter incident."**

Is it possible to read the history of these "sit-in" demonstrations and the content of news which the general public in Baton Rouge was receiving prior to and at the time of these incidents, as shown by the preceding headlines and stories, and say that there was not sufficient probability of violence or disorder to justify the stopping of these demonstrations? Neither the city of Baton Rouge, nor the State of Louisiana for that matter, was attempting to persecute anyone, or deprive any citizen of any of their rights, in the action that they took in the midst of these sit-in demonstrations which resulted in the arrests in the present cases. To the contrary, it seems to us to be obvious that all the law enforcement officials of the



City of Baton Rouge did, was to take only such action as was absolutely necessary to preserve order, peace and tranquility in our community, to avoid violence, disorder and mob rioting and preserve the stable, moderate, law abiding community which we have. *That they were not trying to deprive anyone, much less these defendants and others similarly situated, of any of their constitutional rights, appears obvious from the fact that not only did the law enforcement officials not interfere with these persons when they were picketing or when they were demonstrating on the public streets and marching on the State Capitol, they actually enforced and protected their right to do so. Only when they moved their demonstration to a place where they had no right to be for such purpose, did law enforcement officials take any action.* Furthermore, there can be no doubt that a probability of violence existed and that these defendants, being reasonable people, should have known, and in fact did know, of such probability. The statement by the Mayor of Baton Rouge indicates the concern with which public officials viewed these demonstrations when he said "we are doing our best to prevent any accident, violence or injury to anyone or anyone's property and so far we have succeeded".

In the Baton Rouge Morning Advocate of March 31, 1961, the publishers set forth a front page editorial (which in itself indicates the concern with which responsible citizens viewed these demonstrations) and which we believe to be worthwhile to quote from at length at this point.

## **"LET'S KEEP OUR HEADS"**

"The good relationship between the races in Baton Rouge is threatened by the utterance of the ugly word 'boycott' a development which we are sure most leaders in both races in the community regret. This is an unnecessary and unwise threat aimed at people . . . .

It is unfortunate that the excellent relationships which have prevailed should be interrupted even slightly, as they have been, by a spread through this city of the 'sit-in' demonstrations conducted by Negro college students with much excitement but little lasting effect in a number of other communities. . . .

These are times that require understanding, good will, and patience, regardless of how hard these things may sometimes come to some among us. The recognition and acceptance that really count cannot be hastened or ever won by *any action that creates alarm, destroys good will or alienates the different groups in the community.* Anyone on either side of such a controversy who threatens or hints at mob action automatically destroys the very thing for which he claims to be struggling. Civilized people of all races are revolted and offended by the *thought of violence and disorder.*

Radicals on one side must realize that no changes can be brought about by immature *demonstrations and disorders.* Radicals on the other side must realize that changes cannot be prevented by *threat or intimidation.* The great majority of the people, who want none of all this, will condemn both. Our society may have its imperfec-

tions, as do all things of human design. But this is not the way improvements will be brought about. Time and orderly evolution can bring progress. *Force, can bring none.*" (Emphasis added)

As will be seen from the foregoing, no matter how many isolated sentences are taken from the testimony in these three cases, and regardless of the argument that these defendants were in these establishments for normal business purposes, it is abundantly clear that these defendants were engaged in a demonstration to protest the segregation customs of the people of the State of Louisiana, and invaded private property for the sole purpose of carrying on their organized demonstration. It is also abundantly clear that the carrying on of such demonstrations on private property against the owner's wishes was the doing of an act in such a manner as would foreseeably and unreasonably disturb or alarm the public.

The government contends in its brief that the Trial Court must ignore the circumstances surrounding these cases and the fact that they were a part of a well organized militant movement or so called passive harassment; and that he must ignore the *fact* that such conduct is likely to "disturb the sensibilities" and "arouse resentment" among other members of the public and the owner, and their agents and employees, of the business establishments invaded. They refer to such as taking "judicial notice" and then cite the cases of *Ohio Bell Telephone Company v. Public Utility Commission*, 301 U.S. 292; *United States v. Shaughnessy*, 234 Fed. 2nd 715; and *McCormick evi-*

dence Section 324 (1954) for the proposition that Courts can take judicial notice, especially in criminal cases, only of obvious and incontrovertible facts. (Government Brief pages 25 and 26) However, Louisiana's Courts are specifically authorized by state statute to take judicial notice of that which the trial Judge in these three cases took judicial notice of, if the taking of judicial notice was necessary at all, that is, racial conditions prevailing in the state. LRS 15:422, originally adopted as Act No. 2, Section 1, of 1928, provides in part as follows:

"Section 422. Judicial notice of specific matter.

Judicial cognizance is taken of the following matters: One, . . . (6) the laws of nature, the measure of time, the facts disclosed by the calendar, the facts of geography, the geographical and political division of the world, the facts of history and the political, *social and racial conditions prevailing in this state*; (emphasis supplied)

Taking judicial notice of racial conditions prevailing in the State has been sustained by the Louisiana Supreme Court and is particularly worth noting in the case of *State v. Bessa et al* 115 La. 259, 38 So. 985 (1905). In this case the two defendants, Negroes, were convicted of striking a white man with intent to murder and were sentenced to seven years in the penitentiary. The defendants reserved a Bill of Exceptions to a remark made by the District Attorney in the peroration of his opening address to the jury. According to the defense the prosecuting attorney had

said to the jury that the victim (a white man) was to the jurors trying the case "a creole fellow brother in blood". According to the District Attorney he had said to the jury "a fellow brother in blood" had been met by two unknown riders, and assaulted . . . The Trial Judge's statement as to what occurred was as follows: "In his opening address to the jury the District Attorney referred to the prosecuting witness as a "creole fellow in blood" . . ."

The Louisiana Supreme Court ruled as follows on this point:

"Taking the statement of the Judge, and assuming that the word 'brother' was not used—in other words, assuming that the expression was simply 'fellow in blood' and not 'fellow brother in blood'—the question may be asked: Why did the District Attorney bring up the matter of blood, if not to draw the color line? Here was a jury all white, and two Negroes being tried for striking a white man and nearly killing him. *The Court thinks it knows enough of the situation between the whites and the Negroes in Louisiana to know that the average white man is prone enough to be prejudiced in such a case, without being exhorted thereto by the law officer of the government, and that, such an appeal having been once made, the effect thereof cannot be counteracted by any mere cautionary words of sober reason that may be uttered by the Judge.*"

The Court then reversed the conviction on the basis of the remark made and its having taken judicial notice of racial conditions prevailing in the state. Consequently, we respectfully submit, that if knowledge

of the fact that these sit-in demonstrations are part of a well organized and deliberate movement of demonstration against segregation customs, and knowledge of the tensions existing between the races in Baton Rouge, is the taking of judicial notice, the Trial Court Judge was amply authorized by the law of Louisiana to take such notice.

It is interesting to note, however, that the government then goes on to say (Government Brief, page 26) that, "of course, it is plain that petitioners conduct was likely to disturb the sensibilities of those members of the public who hope for the preservation of racial segregation in restaurants and at lunch counters. It will arouse resentment among the prejudiced. . . ."

I could not agree with the government more that it would so "disturb the sensibilities" and "arouse resentment". And certainly, if such is so "plain," it is just as "plain" that these demonstrations, and this method of protesting segregation customs, could "disturb the sensibilities" and "arouse resentment" among the *unprejudiced, law abiding citizens*, who abhor such an invasion of private property.

## II.

The statute under which petitioners were convicted is almost identical to state statutes and municipal ordinances which have been sustained throughout the nation and as applied to these facts and circumstances is not so vague, indefinite and uncertain as



**to offend the due process clause of the Fourteenth Amendment.**

Defendants further contend, through a rather complicated, almost mathematical-formula-like re-arranging of words, that there is no evidence that defendants committed any acts bringing them within the ambit of LRS 14:103, or that, if there is such evidence, the statute, as applied to the defendants in these cases is so vague and indefinite as to be unconstitutional. Nothing could be farther from the truth. The statute in question is almost identical to statutes and ordinances used in almost every city and every state in the union. Disturbing the peace, order and tranquility of a community can consist of so many different types of acts under so many different kinds of circumstances that to require the state to specifically list and particularize each and every such act, would require an impossibility. A very thorough discussion of this proposition is made by the Appellate Court of Florida in its opinion in the cases of *Steel, et al v. City of Tallahassee* and *Armstrong v. City of Tallahassee No. 671* in which this court refused certiorari at its October term 1960. \_\_\_\_\_ U.S.

\_\_\_\_\_. The Court said:

"the charge and the ordinance seek to deal with conduct similar to that embraced within the common law offenses of 'breach of the peace' and 'disorderly conduct'. . . . The former, breach of peace, is somewhat more restricted and reaches only conduct which disturbs or tends to disturb the tranquility of the community. This would ob-



vously include fighting, damaging of property, threatening injury, display of firearms, loud and boisterous language, menacing gestures in an angry manner, excessive noise and other conduct which would put others in terror for their safety or would be destructive to their reasonable comfort. However, such clear rashness is not the extent of the scope of the offense. An act of violence or an act likely to produce violence is within its orbit, but also embraced are acts which, by causing consternation and alarm, disturb the peace and quiet of the community. Cases cited in *5 Words and Phrases* page 767 under topic "Violence". Blackstone is quoted as saying that, besides the actual breach of the peace, *anything that tends to provoke or excite others to break it is an offense of the same denomination. . . .*

The term "peace" used in this connection is said to mean the tranquility enjoyed by the citizens of the municipality or the community where good order reigns among its members. *This is the natural right of all persons in political society and any violation of that right is a breach of the peace. Davis v. Burgess (Michigan) 20 Northwestern 540; 52 Am. St. Rep. 828. . . .*

Testing the conduct of the appellants against these expressions of the elements of the common law offenses above discussed and the words charged in Count 2, it seems clear that such conduct came within the condemnation of the ordinance and within the offense charged in the count. *Though there was no violence actually displayed or patently threatened or noisy tumult made or exhibited, yet the willful, obstinate and persistent refusal to vacate after a representative*

*of the owner and management had requested it was an ominous threat to the tranquility of the vicinity. Stubborn determination to hold onto the private property of another until some distasteful policy of another is altered to the transgressor's liking, would be greatly disturbing to the management, other employees of the business and all others who may be present.*

In *State v. Cooper*, (Minnesota) 285 Northwest 903, 122 ALR 727, it was held that defendants conduct in carrying a large banner some three feet in length on each side of which was printed the words "Unfair to private chauffeurs and helpers union, Local 912" immediately in front of a private home in an exclusively residential district was held sufficient to sustain a conviction of violation of an ordinance forbidding the making, aiding, countenancing or assisting in making any disturbance or improper diversion. . . . In sustaining the conviction the court said:

"Defendants conduct was likely to arouse anger, disturbance or violence. That there was no outburst of violence was not due to his behavior but to the fortunate circumstance that he was arrested and taken away before any trouble broke. The defendants presence at the McMillian home carrying this banner was likely to provoke trouble and breach of peace. . . ." (Emphasis added)

This position is further strongly supported by the case of *People v. Feiner*, (1950) 300 New York 391, 91 Northeastern 2nd 316, conviction affirmed at 340 U.S. 315. In this case the defendant was convicted

of disorderly conduct under a statute of the State of New York which read in part as follows:

**"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct;**

**. . . 2. acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;" (Emphasis added)**

In this case the defendant was addressing a group of people on the street. (Note here that the defendant was on a public street where he had a right to be). Among other things, the defendant called the Mayor a "champagne sipping bum" and President Truman a bum, referred to the American Legion as Nazi Gestapo Agents, and then said that the 15th Ward was run by corrupt politicians who were operating horse rooms. A nearby police officer, when he figured that the crowd was "getting to the point where they would be unruly" asked the defendant to get down off his box. After the defendant refused three times, the policeman arrested him and he was subsequently charged under the above quoted ordinance. The New York Appellate Court affirmed the defendant's conviction under sub-section 2 of the statute, as quoted above, saying that it was well settled that the judgment of conviction in a case such as this will be affirmed if the evidence establishes a violation of any of the subdivisions of the section. (Here, it was sub-section 2 which prohibits "acts in such a manner as to

annoy, disturb, interfere with, etc.") The court also said that the officer was "motivated solely by a proper concern for the preservation of order and the protection of the general welfare in the face of an actual interference with traffic and an imminently threatened disturbance of the peace of the community." It also said that a clear danger of disorder and violence was threatened and defendant deliberately refused to accede to the reasonable request of the officer. On appeal to the Federal Court on constitutional grounds, the Court said that petitioner was neither arrested nor convicted for the making or content of his speech but rather that it was the reaction which it actually engendered. The Court also said that "*the finding of the State Courts as to the existing situation and the imminence of great disorder coupled with petitioner's deliberate defiance of the police officer convinces us that we should not reverse this conviction in the name of free speech.*"

As further support of the foregoing argument, we would cite 8 Am. Jur. 834 which says "in general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by *an act or conduct . . . tending to provoke or excite others to break the peace . . .* it may consist of an act of violence or *an act likely to produce violence.* It is not necessary that the peace be actually broken to lay the foundation for a prosecution of this offense. *If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required.*"

Furthermore, *American Jurisprudence* states a principle, and cites cases in support thereof, which would seem to specifically cover the case at bar. At page 835 thereof, the following principle is set forth:

"An act which if committed at a certain place or time would not amount to a breach of the peace may constitute a crime if committed at another time or place and under different circumstances. In other words, whether or not a given act amounts to a breach of the peace can only be determined *in the light of the circumstances attending the act and the time and place of its commission.*"

We would further cite in support hereof the case of *Nash v. United States*, 229 U.S. 373, 33 S. Ct. 780, 57 L.Ed. 1232, dealing with the anti-trust act, an act under which a reasonable person of "common intelligence" would have much more difficulty in determining what was expected of him than under the statute involved here. In that case, this court quoted with approval the statement that "*the criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct*".

In addition to these defendants engaging in an organized, militant demonstration on private property in an effort to harass the owner thereof into acceding to their wishes, at a time, and in a place and under such circumstances that any reasonable man should have known that violence and disorder were likely to occur, we have the further element of their refusal

to obey the lawful direction of a police officer, which can, in itself, amount to a breach of, or disturbing the peace, order and tranquility of a community. This element of the defendants' conduct relates itself to the duty and responsibility of a police officer in *any community* to act promptly to maintain the peace, order, and tranquility of his community and to prevent violence and disturbances from occurring where possible. As was said in the case of *People v. Nixon*, 161 Northeast 463, at page 466:

"Police officers are guardians of the public order. Their duty is not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duty they may give reasonable direction."

We would refer the Court also to the cases of *People v. Calpern*, 181NE 572; *Drews, et al, v. State of Maryland*, 167 Atlantic 2nd 341 and *People v. Arko*, 199 NYS 402, in which last case the court said at page 405:

"The case must present proof of some definite and unmistakeable behavior *which might stir if allowed to go unchecked, the public to anger or invite dispute, or bring about a condition of unrest and create a disturbance.*" (Emphasis added)

There can be no doubt in these cases that there was some definite and unmistakeable behavior (the participation in a well organized demonstration on private property, the refusal to leave, and the refusal to obey the direction of a police officer) which "might stir if allowed to go unchecked, the public



to anger or invite dispute, or bring about a condition of unrest and create a disturbance."

### III.

These arrests and convictions do not constitute "state action" so as to bring them with the prohibition of the Fourteenth Amendment against racially discriminatory administration of state laws.

Now let us consider the contention that these arrests and subsequent convictions amount to "state action" to enforce private discrimination which is prohibited by the Fourteenth Amendment to the United States Constitution and the doctrine laid down by this court in the Civil Rights Cases, 109 U.S. 3 and *Shelly v. Kraemer* 334 U.S. 1. As we pointed out in our *Brief in Opposition* the cases relied upon by defendants do not support their argument. In the Civil Rights cases, decided in 1883, and which declared the Civil Rights Act of Congress of March 1, 1875, as unconstitutional in not being authorized by the Thirteenth or Fourteenth Amendment, the majority opinion may be summarized as found on page 14 of the report:

"In other words, it (the Civil Rights Act) steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society toward each other, and imposes sanction for the enforcement of these rules, without referring in any manner to any supposed action of the state or its authorities."

This rule of law has existed unimpaired to this day and is followed in the *Shelly* case, which set



forth the following proposition which is also still the law: \*

"Since the decision of this Court in the Civil Rights cases, 1883, cited above, the principle has become firmly imbedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. *That Amendment erects no shield against merely private conduct however discriminatory or wrongful.*" (emphasis added)

This principle of law has been consistently followed until the present time and has been recently reiterated in the cases of *Williams v. Howard Johnson Restaurant*, 268 Fed. 2nd 845 and *Slack v. Atlantic White Tower System*, 181 Fed. Supp. 124.

The defendants, and the Government, in an attempt to avoid and get around the language of the above cited cases and the principle of law set forth therein, have come up with the rather ingenious argument, never before urged insofar as we have been able to determine, and citing no authority which actually supports such argument, that the custom and personal choice of association, (and corresponding right of choice not to associate,) of persons living within the physical boundaries of a particular state, become the positive policy of that state simply because the personal policy of the individual person exists and is believed in by a majority of the people of that state. They further urge, and again in order to avoid the very clear principal of law laid down by the above cited cases, that the State of Louisiana, by having

previously enacted school segregation laws and other segregation laws on *other* subjects, has, in effect, deprived its citizens of the right to privately discriminate or, to state it correctly, deprived its citizens of the right to associate, and the corresponding right not to associate, with whomsoever they please for whatever reason they please, that is guaranteed to *them* by the Constitution and the principal of law enunciated by this Court in the above cases.

The only cases cited by the government as authority for its rather ingenious argument are *Burton v. Wilmington Parking Authority* 365 U.S. 715; *Yick Wo v. Hopkins* 118 U.S. 356; *Sunday Lake Iron Co. v. Wakefield* 247 U.S. 350; and the dissenting opinion of Mr. Justice Harlan in *Plessy v. Ferguson* 163 U. S. 537. Although the *Burton* case does not support this contention, the government quotes at length from the concurring opinion of Mr. Justice Stewart as though that concurring opinion does support their argument. However, a quick reading of the case and the concurring opinion of Mr. Justice Stewart indicates clearly that it does not. This case involved a statute of the State of Delaware which limited the right of a proprietor to select his customers even though the statute is couched in permissive terms. The statute permits the proprietor of a restaurant to refuse to serve persons "whose reception or entertainment by him would be *offensive to the major part of his customers . . .*" Mr. Justice Stewart in his concurring opinion said "there is no suggestion in the

record that the appellant as an individual was such a person". In the cases at bar there is no such statute regulating, in any way, a proprietor's choice of customers, and such proprietor may refuse service or admission to any person he chooses for whatever personal reason *he alone* might have. The *Yick Wo* and *Sunday Lake* cases concern a clearly discriminatory application of a state statute. Here, the statute in question, which does not refer to race in any respect, has been applied uniformly throughout the years to members of all races, creeds or faiths whenever they engaged in unlawful activities which were likely to disrupt the peace, order and tranquility of the community. Although the dissenting opinion of Mr. Justice Harlan in *Plessy v. Ferguson* has never been adopted by this court with respect to this type of case, the quotation therefrom by the Government, with which we do not argue, is not applicable to these cases nor does it support their argument as no civil rights "as guaranteed by the supreme law of the land" are involved. Not only do these defendants not have the right to compel someone else to associate with them, or give them service, or allow them on their property, they further have no right to go upon another individual's property to engage in a demonstration supporting their particular belief no matter what that belief might be.

The defendants, in their brief, submit similar arguments to attempt to bring these arrests and convictions within the ambit of the Fourteenth Amendment prohibition against "state discrimination". In

support thereof they cite the same cases cited in their *Application for Writs*, which cases, we have previously discussed in our *Brief in Opposition*. Here, again defendants rely primarily on the case of *Marsh v. Alabama* 326 U. S. 501, which we again respectfully submit, is inapplicable to the instant cases. Even if these cases are viewed from the standpoint suggested by defendants, with which we disagree, the *Marsh* case can only support facts identical to the facts before the court in that case. This is apparent because the court before upholding the defendant's right to espouse his personal views on what was otherwise private property, first felt constrained to find that the property involved had become public in nature. Therefore, the *Marsh* case can not be cited as authority for the defendants' position until, and unless this court declares, as a matter of law that the property of all persons engaged in every type of business, no matter how large or how small, has become public in nature.

We can only assume from the Government's argument that this rule of law which they urge would only apply in states which have previously adopted segregation laws and would not apply in states which have not had segregation laws.

In other words, this argument, boiled down to its essentials, is apparently this:

That although a citizen of Montana may privately discriminate and choose with whom he will, or will not, associate, a citizen of the State of Louisiana does not have such right.

and

**That although a citizen of Louisiana may not privately discriminate, and associate, or not associate, with whom he chooses while he is within the boundaries of the State of Louisiana, he may do so if he moves to the State of Nebraska.**

and

**That although a citizen of the State of Nevada may privately discriminate, and associate or not associate, with whom he chooses while he is within the boundaries of the State of Nevada, he cannot do so while he is within the boundaries of the State of Louisiana.**

In other words, defendants and the government, would have this court apply Federal law and Constitutional principals to the citizens of some of the states, primarily the Southern states, but not to the citizens of the other States of the Union. Not only is there no authority for such a contention, but such a result would be directly in the teeth of Section 2, Article 4, of the United States Constitution, which provides that:

**"The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."**

#### IV.

**The decision below does not deprive defendants herein of the freedom of speech or of expression contemplated and protected by the First and Fourteenth Amendment to the Constitution of the United States.**

Defendants again urge their contention that their

arrest and conviction in these cases deprives them of the right of freedom of speech and expression guaranteed by the First and Fourteenth Amendments to the United States Constitution. This contention, still maintained by defendants, is an admission in itself that their real purpose in being on the private property of the individual owners was not for normal business reasons but was actually, and in truth, for the purpose of expressing themselves, demonstrating, or, in their own words, engaging in "activity" to "protest segregation", or, to "in protest of the segregation laws of the State of Louisiana, . . . 'sit in' a cafe counter seat . . . ". (R. Briscoe 8; R. Garner 7, 8; R. Hoston 7). However, in support of this proposition, defendants merely reiterate the cases cited in their *Application for Writs*, and do not cite a single case or other authority which stands for the proposition that any individual has the right to freely express himself on whatever subject he might desire on the private property of other individuals, and over that owner's objection.

Although we have cited cases which clearly stand for the proposition that the right to freedom of speech and expression may be limited in certain times, places, and under certain circumstances, or that "the hours and places of public discussion can be controlled", *Feiner v. New York* 340 U.S. 315; *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 513, 10 ALR 2nd 608; and *Schenck v. United States*, 249 U.S. 47, 63 L. Ed. 470, 39 Sup. Ct. 247, we actually do not need to rely on these cases for defendants contention



to fall. For, defendants have, at no time, cited a single Constitutional provision or case which extends the First Amendment protected right to freely speak or express oneself to the private property of another individual, over his objection. In fact, no clearer refutation of defendants' contention could be had than from reference to the fact that on the third day of these three days of demonstrations, the defendants' right to freedom of speech and expression was not only *not denied them*, but was *actually protected* by local police officers in protecting them, and other members of their race, while picketing, marching the length of the main street of Baton Rouge, and assembling on the steps of the State Capitol, and by preventing other persons, who no doubt objected to defendants' purposes, from interfering therewith.

## V.

**The facts and circumstances of the Briscoe case do not bring it within the prohibition of the Interstate Commerce Act.**

For the first time, throughout the history of these cases, the question is raised by the government's brief, at page 46 thereof, as to whether these arrests and convictions violated section 216 (d) of part two of the Interstate Commerce Act, 49 U.S.C. 316 (d), and then only with respect to the Briscoe case. The portion of the Interstate Commerce Act relied upon by the government, insofar as its application to the Briscoe case is concerned, reads in part as follows:

" . . . it shall be unlawful for any common



carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, *or description of traffic*, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, *or description of traffic* to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever; . . . ." (emphasis added)

It seems plainly obvious from reading the statute cited that it does not apply to the facts in the Briscoe case. In the first place, there is nothing in the quoted act which gives any person the right to engage in a demonstration on the property of another, including an interstate commerce carrier. These defendants, just like the defendants in the other cases, were engaged in an unlawful demonstration on private property which demonstration was likely to disturb the peace, order, and tranquility of the community; they were asked to leave and refused; police officers, in carrying out their duty and responsibility in maintaining the peace and order of the community requested the defendants to leave and they again refused; then and only then were they arrested. No where in the record, in the government's brief, or otherwise, is there any evidence, or even statements, that the Greyhound bus lines, the only interstate common carrier which could be involved, discriminated against these defendants in any manner whatsoever.

Furthermore, not one of these defendants was

a passenger in interstate commerce. The government, in its brief, refers to the words "any particular person" as used in the act and concludes that the act covered all persons who might enter the station of an Interstate Commerce Carrier for whatever purpose and regardless of the fact that they were not passengers in interstate commerce. However, the term "any particular person" as used in the Interstate Commerce Act (an act regulating interstate traffic) must obviously refer to the other words in the act, "or description of traffic". That this is true is shown by the use of the disjunctive "or" before "description of traffic". In other words, the word "traffic" relates back and applies to all of the preceding words including the word "description" as well as the word "person". Furthermore, although there is no evidence in the record either way, as a matter of fact, the restaurant, or lunch counter, portion of the building in which these demonstrations took place, is not owned by the interstate commerce carrier, Greyhound bus lines. That portion of the building, the restaurant, is leased to a different corporation which is not under the control or direction of the interstate commerce carrier.

The only case cited by the government in support of this contention is the case of *Boynton v. Virginia*, 364 U.S. 454 which is not applicable to the Briscoe case because it involved a person traveling in interstate commerce, whereas these persons were not so doing; and it did not involve persons engaged in unlawful demonstrations on private property as is the case here. We respectfully submit that the dissent in

the Boynton case by Mr. Justice Whitaker, with whom Mr. Justice Clark joined, was not only correct, but is particularly applicable to the Briscoe case. As Mr. Justice Whitaker said, ". . . there is no evidence even tending to show that the restaurant was operated or controlled by any carrier, directly or indirectly." And further on in the dissent, it was said "to me, it seems, that Congress, in Section 203 (a) (19), hardly meant to include a private restaurant neither owned, operated or controlled by a carrier." We would further submit that neither was it intended to apply to persons not traveling in interstate commerce as Congressional jurisdiction is obtained only through the Interstate Commerce Clause of the Constitution, and only over persons either engaged in interstate commerce or traveling in interstate commerce. In fact, as noted above, the language of the statute itself excludes persons not traveling in interstate commerce. Furthermore, we also respectfully submit, in line with the dissent, that the act was never intended to apply to persons engaged in unlawful demonstrations on private property regardless of whether in interstate commerce or not.

As the committee of the Bill of Rights of the Association of the Bar of the City of New York has seen fit to file a Brief, *Amicus Curiae*, in these cases we would discuss briefly the one contention raised therein, that these arrests and convictions constitute state action which is prohibited by the Fourteenth

Amendment. As will be seen from their "motion for leave to file brief amicus curiae," commencing on page 1 of their brief, their brief is submitted solely in support of the proposition that these cases amount to state action to enforce private discrimination and they rely almost entirely on the rule laid down in *Shelly v. Kraemer*, 334, U.S. 1 in support of this argument. We declined to consent to the filing of the brief for the reason that this particular point had been adequately covered by the defendants, as set forth in the rules of this Honorable Court, and we still oppose the filing of this Brief Amicus Curiae on that ground. However, because of one statement made on page 7 of their brief, we will discuss their argument briefly. In the last paragraph on page 7 of their brief, they make the following statement:

"Reversal of the conviction will leave the private parties to the dispute over segregation at the lunch counters to work out a resolution of their differences by lawful means of persuasion and pressure, while affirmance would result in continued reliance upon police and court action to perpetuate discrimination in places open to the public."

Nothing could be farther from the truth. In fact, the exact opposite of that statement would actually hold true. If these decisions are affirmed, the private parties to the dispute over segregation at the lunch counters may then work out a resolution of their differences by lawful means of persuasion as that phrase is usually contemplated. Then, and only then,

can the "private parties" get together to discuss their differences in a peaceful manner "across the table" and attempt to resolve their differences. The term "persuasion" usually contemplates peaceful argument and discussion and a convincing thereby of one person to accede to the request of the other. Such is not the method that these defendants have utilized so far. And furthermore, if these decisions are reversed, it can be logically expected that these defendants, and others similarly situated, will once again commence this unlawful harassment of private business establishments and will perhaps, under the cloak of such decision, speed up and increase their already well organized and militant program of harassing demonstrations on the private property of other individuals. *In the interest of better relations between the races; in the interest of reasonableness, peacefulness and courteousness; in the interest of the rights of all parties concerned—the shop owner, the demonstrator, the general public; the instant cases must be affirmed.*

In relying upon the Shelly case, the Committee ignores one very important factual difference between it and the case at bar. The Shelly case involves court enforcement of private covenants established by one private property owner on his property so as to affect other individuals in the future, long after the original owner had passed out of the picture. Specifically, in the Shelly case, you had two individuals, one who had agreed to buy and one who had agreed to sell, who are being prevented from carry-



ing out their voluntary agreement by a third person who no longer had any connection with the property involved. And although the court held illegal the issuance of an injunction to prevent the completion of the voluntary sale, it reaffirmed the principle of law that has never been changed by any case that,

“that amendment erects no shield against merely private conduct, however discriminatory or wrongful. We conclude, therefore, that the restrictive agreement standing alone can not be

regarded as violative of any right guaranteed to petitioners by the Fourteenth Amendment. . . .”

In the cases before the court we have no voluntary or willing agreement between a buyer on the one hand and a seller on the other. To the contrary, we have an owner of merchandise, who does not wish to sell, or does not wish to sell a part of his merchandise, to these alleged willing buyers. Not even a strained interpretation of the *Shelly case* could stand for the proposition that one individual who wants to buy can compel the seller to sell regardless of his desire not to sell.

The Committee then relies on the case of *Marsh v. Alabama*, 326 U.S. 501, discussed heretofore, in support of their request that this Court declare all private property, or at least all private property on which a business is being conducted, to be so public in nature that the private owner thereof cannot refuse admission thereto, or service therefrom, to anyone he chooses, for whatever reason he chooses. I can

only conclude from their brief, that they would have such ruling apply to all businesses, regardless of how large or how small, including the corner drug store, the corner grocery store, the man with the hot tamale cart, and the child selling lemonade at two cents a glass. Not only is such a contention not supported by the Constitution or the prior jurisprudence of this Honorable Court, but such a ruling is in itself inherently dangerous. It would subject private business to public regulation by any and all public agencies whether State, Local, or Federal, in all phases of its affairs, and to an extent that was never contemplated by the founders of our Nation! Such a ruling would put all private business, regardless of how large or small, in the same position as public utilities and subject them to complete governmental control which is the exact opposite of what our system of government and our system of economy stand for.



**CONCLUSION**

For the reasons stated, it is respectfully submitted that the judgments of the court below should be affirmed.

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**PROOF OF SERVICE**

I, John F. Ward, Jr., one of the Attorneys for the State of Louisiana, respondent herein, certify that on the \_\_\_\_\_ day of October, 1961, I served copies of the foregoing Brief of the State of Louisiana, by mailing the required number of copies, postage prepaid, to Counsel of Record for Petitioners, at the following addresses: A. P. Tureaud, 1821 Orleans Avenue, New Orleans, Louisiana; Johnnie A. Jones, 530 South 13th Street, Baton Rouge, Louisiana; Thurgood Marshall and Jack Greenberg, 10 Columbus Circle, New York 19, New York; Solicitor General, Department of Justice, Washington 25, D.C., and William A. Delano, 42 West 44th Street, New York 36, New York.

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Counsel of Record  
for Respondent

Sworn to and subscribed before me, the undersigned Notary Public, within and for the Parish of East Baton Rouge, State of Louisiana, this \_\_\_\_\_ day of October, 1961.

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**NOTARY PUBLIC**

P. Y  
SUPREME COURT. U. S.

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FILED

OCT 19 1961

JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1961

No. 26

JOHN BURRELL GARNER, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. 27

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. 28

JANNETTE HOSTON, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

On Writs of Certiorari to the Supreme Court of Louisiana

**Supplemental Brief on Behalf of Respondent  
State of Louisiana**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1961

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No. 26

JOHN BURRELL GARNER, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

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No. 27

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

---

No. 28

JANNETTE HOSTON, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

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On Writs of Certiorari to the Supreme Court of Louisiana

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**Supplemental Brief on Behalf of Respondent  
State of Louisiana**

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**THE ACTION OF THESE DEFENDANTS CONSTITUTED  
AN ILLEGAL SEIZURE OF THE PROPERTY OF  
ANOTHER WHICH THIS COURT HAS LONG HELD  
UNLAWFUL**

The action of these defendants in occupying a portion of the premises of the owner and refusing to give up possession is comparable to the action of employees in the "sit-down strikes" of the late 1930's which "sit-down strikes" this Court immediately held unlawful. *The Oakmar*, 20 F. Supp. 650 (1937); *Na-*

*tional Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U.S. 240, 59 S. Ct. 490; *Korthinos et al. v. Niarchos, et al.*, 175 F. 2d 730, reh. den. 175 F. 2d 734, cert. den. 70 S. Ct. 241, 338 P. U. S. 894.

In those cases, and related cases, the employees, contending they were entitled to better wages, etc., refused to leave the premises, or "sat-down" on the job in a strike. In other words, they "sat down" on the owner's property while these defendants "sat-in" the owner's property. The purpose is the same; that is, to coerce the lawful owner of the property, by refusing to give up possession of his property, into doing what the "sit-downers" or "sit-inners" wanted him to do.

With respect to the legality of such action, the Fourth Circuit of Appeals said in the *Korthinos* case at page 732:

"[1, 2] Little need be said as to the possessory libels, since as to them the cases have become entirely moot. Since the right to issue, these libels has been discussed at great length, however, we think we should say that we entertain no doubt as to the power of a court of admiralty to direct that persons engaging in a sit down strike on a vessel be removed therefrom by the Marshal of the District, to the end that the owners may have the lawful possession and use of their property. See *Ward v. Peck*, 18 How. 267, 15 L.Ed. 383; *The Tilton*, 5 Mason 465, Fed.Cas.No. 14,054, opinion by Mr. Justice Storey; *The Navemar*, 303 U.S. 68, 58 S.Ct. 432, 82 L.Ed. 667.

\* \* \* \* \*

*The right to strike does not carry with it the right to deprive another person of the possession of his*

property. See *The Oakmar*, D. C., 20 F.Supp. 650; *The Losmar*, D. C., 20 F. Supp. 650; 887, . . ." (emphasis added)

\* \* \* \* \*

Furthermore, the reasoning of the Federal District Court in the *Oakmar* case, the landmark decision in this field, is particularly applicable to the instant cases and we would quote therefrom at some length as follows:

"Everything disclosed at this hearing proves conclusively that these so-called strikers do not have the slightest legal right to do what they are doing. They are, by their own statements, by their own admissions, trespassers of a most willful sort,—members of a union whose directions have apparently been blindly followed. The vessel's owner owes them nothing that has not been fully paid or tendered. Their contracts of employment have otherwise been fully performed on the part of the vessel's owner, and are at an end. What, then is it that these men want to accomplish? To compel the vessel's owner to pay them and other members of the union higher future wages, and to do other things on their behalf which they claim they are entitled to, and which will redound to their benefit during any future employment.

[3-5] How do they seek to do this? By taking possession of the vessel and saying to her owner, "We won't let you use her unless and until you meet our demands." *In short, instead of resorting to legal methods in an effort to obtain what they claim they are entitled to, they seek to take away the property rights of the vessel's owner, and by so doing to coerce, yes, in effect, to club such owner into submission.* \* \* \*

\* \* \* \* \*

\* \* \* But these men say in the present case, in effect, that "our status of having been employees upon the property of another puts us in a pre-ferred class, entitles us to an interest in such property, which we can appropriate, or at least hold as security, as it were, for the more complete guarantee, or the fruition, of those rights which are fundamentally ours under the law." But the mere statement of such a theory is its own and best refutation. *It is but another and less shocking way of saying, "If the law does not give us what we want, we will make the law over."* Such theories are the handmaid of crime and anarchy. *They emanate from those persons who lack that self-control which enables men to abide the slower processes of orderly government instead of yielding to that impatience which, if not restrained, will ultimately destroy the fundamental rules for human freedom upon which our form of government is based.* The law is of course, progressive. It must be, because the law represents rules of human conduct—of life, and life is progress. The child progresses, grows into manhood or womanhood, but not into an animal, with attributes of the beast, displacing human ones. Similarly, our law must always keep inviolate certain basic rights inherent in any free people, and one of these rights is the right to use one's property without molestation from mere trespassers. Such right will be protected by this court as long as it sits, without fear or favor. \* \* \*

And it would appear that the employees in the "sit-down strike" cases had a closer relationship with the owner, and because of it an even greater right to do what they did, than these defendants have to the owner of the property which they invaded.

We respectfully submit that the reasoning of the Court in the "sit-down" strike cases, and particularly



as stated by Judge Coleman in the *Oakmar* case, is exactly applicable to the present cases.

### CONCLUSION

We respectfully submit that the convictions should be affirmed.

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### FROOF OF SERVICE

I, John F. Ward, Jr., one of the Attorneys for the State of Louisiana, respondent herein, and a member of this bar, certify that on the 19th day of October, 1961, I served copies of the foregoing Supplemental Brief of the State of Louisiana on Counsel of Record for Petitioners, Jack Greenberg of 10 Columbus Circle, New York 19, New York; and the Solicitor General, Department of Justice, Washington 25, D. C., by personally delivering same to them.

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